[redacted]

[redacted]

No. [redacted]

STANDARD OIL COMPANY, [redacted]

[redacted]

THE STATE OF MISSOURI ON THE [redacted]
HERBERT S. HADLEY, ATTORNEY [redacted]
ORDER BY ELLIOTT W. MAJOR, [redacted]

No. [redacted]

REPUBLIC OIL COMPANY, [redacted]

THE STATE OF MISSOURI ON THE [redacted]
HERBERT S. HADLEY, ATTORNEY [redacted]
ORDER BY ELLIOTT W. MAJOR, [redacted]

IN ERROR TO THE SUPREME COURT OF THE STATE [redacted]

[redacted]

(21,665 and 21,666.)

(21,665 and 21,666.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 218.

STANDARD OIL COMPANY OF INDIANA, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR, ET AL.

No. 219.

REPUBLIC OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 UNITED STATES OF AMERICA, *set:*

To State of Missouri and its Attorney General, Herbert S. Hadley, succeeded by Elliott W. Major, Waters Pierce Oil Company, Republic Oil Company, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of Missouri wherein The Standard Oil Company of Indiana — plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable L. B. Valliant, Chief Justice of the Supreme Court of Missouri, this 9 day of March, in the year of our Lord one thou nd nine hundred and nine.

LEROY B. VALLIANT,
Chief Justice.

1½ UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, set:

I hereby acknowledge due service of the within Citation this 15th day of March, A. D. 1909.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri.

[Endorsed:] United States Circuit Court, Western District of Missouri, Western Division. Citation. Filed March 10, 1909. Jno. R. Green, Clerk.

2 UNITED STATES OF AMERICA, *set:*

To State of Missouri and its Attorney General, Herbert S. Hadley, succeeded by Elliott W. Major, Waters Pierce Oil Company, and Standard Oil Company of Indiana, Greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of Missouri wherein the Republic Oil Company — plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable L. B. Valliant, Chief Justice of the Supreme Court of Missouri, this 9 day of March, in the year of our Lord one thousand nine hundred and nine.

LEROY B. VALLIANT,
Chief Justice.

2½ UNITED STATES OF AMERICA,
Western Division of the Western
District of Missouri, set:

I hereby acknowledge due service of the within Citation this 15th day of March, A. D. 1909.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri.

[Endorsed:] 12988. United States Circuit Court, Western District of Missouri, Western Division. Republic Oil Co., P. E., vs. State of Mo. ex rel. Att'y Gen'l, D. E. Citation. Filed March 10, 1909. Jno. R. Green, Clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the October Term, 1908, thereof, between State of Missouri, on the information of Herbert S. Hadley, Attorney General, and Standard Oil Company (of Indiana), Waters Pierce Oil Company and Republic Oil Company, a manifest error hath happened, to the great damage of the said Standard Oil Company, (of Indiana), as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from the day of signing the citation in this cause, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this third day of May, in the year of Our Lord One Thousand Nine Hundred and Nine.

3¼ Issued at Office in the City of Jefferson, with the seal of the Circuit Court of the United States, for the Central Division of the Western District of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court for the Western District of Missouri, Central Division.]

H. C. GEISBERG,
Clerk Circuit Court United States, Western
District of Missouri, Central Division.

Allowed by—
LEROY B. VALLIANT,
Chief Justice.

3½ *Return to Writ.*

UNITED STATES OF AMERICA,
State of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case as requested by attorneys for P. E. together with all things concerning the same.

In witness whereof, I hereto subscribe and affix the seal of said Supreme Court, at the City of Jefferson, this 3rd day of —, A. D. 1909.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

[Endorsed:] United States Circuit Court, Western District of Missouri, Central Division. State of Missouri on the information of Herbert S. Hadley, Attorney General, vs. Standard Oil Company, (of Indiana). Writ of error to the Supreme Court of Missouri.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the October Term, 1908, thereof between State of Missouri, on the information of Herbert S. Hadley, Attorney General, and Standard Oil Company (of Indiana), Waters Pierce Oil Company and Republic Oil Company, a manifest error hath happened, to the great damage of the said Republic Oil Company, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from the day of signing the citation in this cause, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this third day of May, in the year of Our Lord One Thousand Nine Hundred and Nine.

4¼ Issued at Office in the City of Jefferson, with the seal of the Circuit Court of the United States, for the Central Division of the Western District of Missouri, dated as aforesaid.

[Seal of the United States Circuit Court for the Western District of Missouri, Central Division.]

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
LEROY B. VALLIANT,
Chief Justice.

4½ *Return to Writ.*

UNITED STATES OF AMERICA,
State of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case as requested by attorneys for P. E. together with all things concerning the same.

In witness whereof, I hereto subscribe and affix the seal of said Supreme Court, at the City of Jefferson, this 3rd day of —, A. D. 1909.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

[Endorsed:] United States Circuit Court, Western District of Missouri, Central Division. State of Missouri on the information of Herbert S. Hadley, Attorney General, vs. Republic Oil Company. Writ of error to the Supreme Court of Missouri.

5 STATE OF MISSOURI, *set:*

Be it remembered that heretofore, to-wit, on the 29th day of March, A. D. 1905, the following proceedings were had and made by this court in the case of State ex informatione, Attorney General versus Standard Oil Company et al., which said record entry is in words and figures as follows, to-wit:

STATE ex Inf. H. S. HADLEY, Att'y Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Comes now the Attorney General and files his information in the nature of quo warranto against the said respondents, which said information being seen and fully considered by the court, it is ordered that a rule to show cause issue as prayed, said rule to be directed to said respondents, and made returnable April 11, 1905,

Which said petition and rule to show cause is in the words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court en Banc, October Term, 1904.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Order to Show Cause.

To Standard Oil Company, Waters-Pierce Oil Company and
6 Republic Oil Company, Respondents, Greeting:

Whereas Herbert S. Hadley, Attorney Generao of the State of Missouri, has filed an information in the nature of a quo warranto, a copy of which is hereto attached and made a part hereof, charging that the above named respondents are unlawfully abusing their rights and franchises and unlawfully usurping authorities and privileges as corporations under the laws of Missouri by entering into and becoming a member of a pool, trust, combination, confederation, agreement and understanding, as therein charged and set forth, and asking that a Writ of Quo Warranto issue directed to said respondents;

Now, therefore, you the said respondents, the said Standard Oil Company, Waters-Pierce Oil Company and Republic Oil Company, are hereby commanded to be and appear before the Supreme Court of Missouri en Banc, upon the 11th day of April, 1905, and show by what warrant or authority you claim to hold, use and exercise corporate rights, privileges and franchises under the laws of the State of Missouri, and why you should not be ousted from the rights, authority, license and certificate to do business under the laws of the State of Missouri.

Witness my hand as Clerk of the Supreme Court of the State of Missouri, and the seal of said Court hereto affixed. Done at my office in the City of Jefferson this 29th day of March, 1905.

[SEAL.] JNO. R. GREEN, *Clerk.*

7 In the Supreme Court of Missouri, Court en Banc, October Term, 1904.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Information.

Information in the Nature of Quo Warranto.

Comes now Herbert S. Hadley, Attorney General of the State of Missouri, who prosecutes this suit in behalf of the State of Missouri, and causes the Court to understand and be informed that the Standard Oil Company, one of the respondents herein, is now, and at all times mentioned herein was, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose of engaging in the business of refining petroleum and buying and selling the products thereof; that it is now, and at all times herein mentioned was, authorized to do business in the State of Missouri, having complied with the laws of this State authorizing and permitting foreign corporations to do business herein; and at all times herein mentioned was engaged in the business of selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, and that recently it has established and is now conducting a refinery in this State for the purpose of refining petroleum; that the Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the State of New York, for the purpose of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all times herein men-

8 tioned was, authorized to do business in the State of Missouri, having complied with the laws of this State authorizing foreign corporations to do business in this State; and at all times herein mentioned was engaged in the business of buying and selling the products of petroleum in certain parts of the State of Missouri; that the Waters-Pierce Oil Company is now, and at all times herein mentioned was, a corporation duly organized under and by virtue of the laws of the State of Missouri for the purpose of refining petroleum and buying and selling the products thereof, and at all times herein mentioned was engaged in the business of buying and selling the products of petroleum in certain parts of the State of Missouri.

Your informant further informs the Court that the said Standard Oil Company, Republic Oil Company and the Waters-Pierce Oil Company, between the — day of ——, 1901, and the 29th day of March, 1905, created entered into and became members of a pool, trust, agreement, confederation, combination and understanding

among themselves, and each other, to regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum offered for sale or sold in the State of Missouri, and to control and limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri; and to control, limit and prevent competition in said business of buying and selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, between themselves and others engaged in like business, and to deceive and mislead the public into the belief that said respondents were separate and distinct corporations each pursuing an independent business as legitimate competitors in the purchase and sale of said products of petroleum; and that said respondents have by said pool, trust, agreement, confederation, combination and understanding fixed and maintained the price of naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum sold and offered for sale by them in this State,

9 and have controlled and limited the trade in said products in this state, and have prevented and destroyed competition in the purchase and sale of said products of petroleum in the State of Missouri, and have decided and mislead the public into the belief that they, the said respondents, were separate and distinct corporations, each pursuing an independent business as legitimate competitors, when, in fact, they, the said respondents, had entered into and were members of said pool, trust, agreement, confederation, combination and understanding, all to the great detriment and damage of the purchasing public and the people of Missouri.

And your Informant further states that in pursuance of said pool, trust, agreement, confederation, combination and understanding so entered into by said respondents as aforesaid, for the accomplishment of the objects and purposes aforesaid, the territory of the State of Missouri has, by said respondents, been divided up between the said Standard Oil Company and the Waters-Pierce Oil Company; and that the said Standard Oil Company, according to said agreement so entered into by said respondents as aforesaid, has agreed not to sell, and does not sell, said products of petroleum in the State of Missouri in a territory therein lying for the most part south of the Missouri river, which said territory is, by said agreement, assigned to said Waters-Pierce Oil Company; and that said Waters-Pierce Oil Company, according to said combination, confederation, agreement and understanding as aforesaid, has agreed not to sell, and does not sell, any of said products of petroleum in certain territory in the State of Missouri lying mostly north of the Missouri river, which said territory is, by said agreement, assigned to said Standard Oil Company; that the said Republic Oil Company, according to said combination, confederation, agreement and understanding, so had by respondents as aforesaid, sells oil in different parts of the State of Missouri in territory in which, by said agreement, the Standard Oil Company does not sell and in which, by said agree-

ment, the Waters-Pierce Oil Company does not sell, but that the purpose and object accomplished under said agreement through the sale of oil by the said Republic Oil Company is to supply
10 oil to such retail dealers therein, and others, who by reason of prejudice against said Waters-Pierce Oil Company or said Standard Oil Company, or from other reasons, refuse to trade with either of said respondents in their respective territories; and the further object accomplished by said Republic Oil Company, under said agreement, confederation, combination and understanding so had by respondents as aforesaid, in selling oil in each of said territories, is to enable said respondents in the accomplishment of the purposes of said pool, trust, agreement, confederation, combination and understanding to crush out competitors in the sale of the products of petroleum by temporarily reducing the price thereof through sales made by said Republic Oil Company.

But your informant further states that no actual competition exists in the sale of said products of petroleum, between said Republic Oil Company and the Standard Oil Company in that territory in the State of Missouri assigned to said Standard Oil Company, according to said agreement, confederation, and understanding, and that no actual competition exists, in the sale of said products of petroleum, between said Republic Oil Company and the Waters-Pierce Oil Company in that territory in the State of Missouri assigned to said Waters-Pierce Oil Company, according to said combination, confederation and agreement.

Your informant further informs the court that each and all of said respondents appear to the public in this State as separate and distinct corporations, pretending to pursue an independent business as legitimate competitors in the purchase and sale of said products of petroleum, when, in fact, there exists said secret agreement, combination, pool, trust and understanding by and between said respondents by which they control the price of said products of petroleum sold in the State of Missouri and prevent competition in the price thereof among themselves and crush out and destroy competition from others; and that said respondents, under and by virtue of said pool, trust, combination, agreement and understanding, so maintained and entered into by them, deceive and mislead
11 the public, and are deceiving and misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors.

Your informant further causes the Court to be informed and to understand that the said Standard Oil Company is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, and at other points, large oil refineries wherein said products of petroleum hereinbefore mentioned are made and produced from the refining of petroleum; that by virtue of the understanding, combination, confederation and agreement so made and entered into by said respondents as aforesaid, and in addition to the other objects and purposes thereof, and in addition to the other acts of said respondents done in compliance therewith and in the enforcement thereof, said Standard Oil Company has agreed to

sell, and sells said products of petroleum in the State of Missouri only to the Waters-Pierce Oil Company and the Republic Oil Company and through itself, and the said Waters-Pierce Oil Company and Republic Oil Company have, by said agreement, agreed to buy, and do buy, said products of petroleum only of the Standard Oil Company.

Your informant further states that said respondents herein, by reason of said combination, pool, trust and understanding, and the acts done in furtherance and in pursuance thereof, as herein stated, have been able to control and supply, and do control and supply, to the retail dealers and to the general public in the State of Missouri, from eighty-five to ninety per cent. of all the naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum offered for sale and sold for general consumption in the State of Missouri; and that by virtue of said pool, trust, agreement, combination, confederation and understanding so entered into by said respondents as aforesaid, and by reason of the acts hereinbefore described, so done by said respondents in pursuance of and in the enforcement of said pool, trust, agreement and understanding, they have been able to control, and do control, the prices of the products of petroleum in the State of Missouri, and they do prevent,
12 and have prevented competition among themselves in the purchase and sale of the products of petroleum in the State of Missouri; they have secured control of the oil business and of the purchase and sale of oil in the State of Missouri and have limited the trade therein and have driven out competition in said business, and that said combination, confederation, pool, trust and understanding so entered into and maintained by said respondents as aforesaid, and said acts and methods done and performed by said respondents in pursuance and in furtherance thereof, have deprived, and do deprive, the public of free, full and wholesome competition in the sale of the products of petroleum, to the great damage and detriment of the purchasing public and the people of Missouri.

Informant further states that by reason of the monopoly and control of the oil business in the State of Missouri so had and maintained by said respondents as aforesaid, and the prevention of competition in the purchase and sale of said products of petroleum as aforesaid, in the manner and by the means aforesaid, and by reason of the deception so accomplished by said respondents upon the general public whereby it is caused to believe that said respondents are independent corporations engaged in a competitive business, and by reason of the acts of said respondents, as herein stated, said respondents are now wilfully and unlawfully maintaining an illegal agreement, combination, pool, trust and understanding, and are now unlawfully and illegally fixing and controlling the prices, in the manner aforesaid, for the products of petroleum sold in the State of Missouri; and by reason of the premises, said respondents have since the — day of ——, 1901, and up to the present time, grossly offended against the laws of this State and wilfully and flagrantly abused and misused their rights, authority, and franchises and have wilfully and unlawfully assumed and unlawfully

and wilfully usurped authorities and privileges not granted to said corporations by the laws of Missouri, by entering into and becoming a member of said trust, combination, confederation, agreement and understanding as aforesaid; and in pursuance of the afore-
13 said agreement, combination, trust, confederation and understanding so made and maintained as aforesaid, respondents are now, in the State of Missouri, unlawfully and wilfully monopolizing, regulating, fixing, maintaining and controlling the price to be paid by retail dealers and others in the State of Missouri for the said products of petroleum, and unlawfully limiting the trade and competition in the purchase and sale of said products of petroleum, and are now unlawfully and wilfully deceiving and misleading the retail dealers in said products of petroleum and the general public into the belief that said respondents are independent or competing corporations and that the acts and agreements of the respondent corporations, as herein set forth, constitute a wilful and malicious perversion of the franchises granted to said corporations by the State of Missouri, and an illegal and wilful usurpation of privileges and authorities not granted to said respondents by the State of Missouri, to the great and permanent injury of the public.

Wherefore, your Informant, prosecuting in this behalf for the State of Missouri, prays that the respondents corporations, and each of them severally, be excluded from all corporate rights and privileges under the laws of the State of Missouri, and that their franchises, rights, authority, license and certificate to do business under the laws of the State of Missouri be declared forfeited, and that each and all of them be ousted from their several corporate franchises, privileges, license and authority to do business under the laws of this State.

HERBERT S. HADLEY,
Attorney General.

And afterwards, to-wit, on the 11th day of April, 1905, the further following proceedings were had in said cause, viz:

14 STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resp.

Come now the Standard Oil Company and the Republic Oil Company by attorney, and file their separate returns herein.

Which said returns are in words and figures as follows, to-wit:

In the Supreme Court of the State of Missouri, October Term, 1904.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Respondents.

Answer and Return of Standard Oil Company (of Indiana), one of the Above-named Respondents.

Now comes said respondent and, for answer and return to the information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose, among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all the times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the state authorizing and permitting foreign corporations to do business therein, and having a license from the state authorities so to do; it was at all the times mentioned in the information engaged in the business of selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the state of Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum, having expended many thousands of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the state of New York, for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all the times mentioned in the information was authorized to do business in this state, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the state for such purposes; at all times herein mentioned it was engaged in the business of buying and selling the products of petroleum in this state, as it was authorized to do by its articles of incorporation, by the laws of the state, and by the license aforesaid.

The Waters-Pierce Oil Company is now, and at all the times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the state of Missouri, for the purpose, among others, of refining petroleum, and buying and selling the products thereof; and at all the times therein mentioned, was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

16 This respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding with either or any of the other respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri, or to control or limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in said business of buying or selling naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri between the respondents or others engaged in like business, or deceive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondents or either of them, fixed or maintained the prices of naptha, benzine, gasoline, kerosene or lubricating oil, or any or either of them, or any other product of petroleum sold or offered for sale by it, or either of them, in this state, nor controlled or limited the trade of said products in this state; nor prevented or destroyed competition in the purchase or sale of said products or any or either of them in this state, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust agreement, confederation, combination or understanding.

This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination, or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the state of Mis-

17 souri between the Standard Oil Company and the Waters-Pierce Oil Company. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell any of said products in this state in a territory therein lying for the most part south of the Missouri River, nor is any such territory by any agreement assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or understanding, agreed not to sell, and does not sell any of said products in certain territory of Missouri, lying mostly north of the Missouri River, nor is any such territory, by any agreement, assigned to the Standard Oil Company. It is not true that the Republic Oil

Company, according to any combination, confederation, agreement or understanding, had by the respondents or any of them, sells oil in different parts of the state in territory in which by any agreement the Standard Oil Company does not sell and in which by any agreement the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agreement or otherwise through the sale of oil by the Republic Oil Company is to supply oil to such retail dealers in the state, or others who, by reason of prejudice or otherwise, against the Waters-Pierce Oil Company, or the Standard Oil Company, or for any other reason, refuses to trade with either of said respondents in said alleged territory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, combination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondents in the accomplishment of the purposes of any pool, trust, agreement, confederation or understanding, to crush out competitors in the sale of petroleum, by temporarily reducing the price thereof through sale made by the said Republic Oil Company, or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the state of Mis-
18 souri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of products of petroleum between the said Republic Oil Company and the Waters-Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are separate and distinct corporations, but it is not true that either makes any false pretenses to pursuing an independent business as legitimate competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool, trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents or either of them, under and by virtue of any pool, trust, combination, agreement or understanding, maintained or entered into by them, deceive and mislead the public, or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the refining of petroleum; but it is not true that by virtue of any understanding, combination, confederation, or agreement made or entered into by respondents, or any of them, or in addition to other objects or purposes, or in addition to any other act of any respondent done in

compliance with any such combination, understanding, confederation, or agreement, or in the enforcement thereof, that the Standard Oil Company has agreed to sell, or sells said products of petroleum in the state of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said
19 Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

It is not true that respondents or either of them by reason of any combination, pool, trust or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust, or understanding, have been able to control the supply, or do control and supply to the retail dealers and to the general public in the state from Eighty-five to ninety per cent or any other per cent of all the naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold for general consumption in the state.

It is not true that by virtue of any pool, trust, agreement, combination, confederation or understanding entered into by respondents, or by reason of any of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents or either of them have been able to control, or do control the prices of the products of petroleum in the state, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the state, or have limited the trade therein, or have driven out competition in said business.

It is not true that any combination, confederation, pool, trust, or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them or either of them have deprived or do deprive the public of free, full or wholesome competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occur-ing to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the products of petroleum, or by reason of any deception accomplished by respondents or otherwise that said respondents or either
20 of them are now wilfully or unlawfully or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or control-ing the prices of the products of petroleum sold in the state. It is not true, that respondents or either of them have, since the — day of ——, 1901, and up to the present time, or at any time grossly or otherwise offended against the laws of this state, or wilfully or flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges

not granted to corporations by the laws of Missouri by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust, confederation or understanding, made or maintained, the respondents are now in this state unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the state of Missouri for the said products of petroleum, or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchises granted to respondents by this state, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondents by the state, and it is not true that there is or has been by any act of respondents any injury to the public.

Wherefore respondents asks to be dismissed with costs.

2. The facts stated in the information are wholly insufficient to justify a judgment in favor of informant.

Wherefore respondent asks to be dismissed with costs.

3. And this respondent, complaining and protesting that it is not in law bound to answer said information, states:

21 The information herein is based upon the alleged violation of the provisions of each of sections 8965, 8966, 8967, 8968, 8971, 8972, 8978 of the Revised Statutes of Missouri, 1899, and seeks to enforce the provisions of each of said sections. Each of said sections is unconstitutional and void, for each of the following reasons:

(*a*) It violates the fourteenth amendment to the Constitution of the United States, wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws, nor make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

(*b*) It violates the provisions of Section 8, Article 1, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several states and Indian tribes, in which commerce respondent is engaged.

(*c*) It violates Section 10 of Article I of the Constitution of the United States, which provides that no state shall pass any *ex post facto* law, or law impairing the obligations of contracts.

(*d*) It violates Section 4, Article 2, of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(*e*) It violates the provisions of Section 30, Article 2, of the Constitution of the State of Missouri, providing that no persons shall be deprived of life, liberty or property without due process of law.

(*f*) It violates Section 53 of Article 4 of the Constitution of the State of Missouri, which forbids the legislature from granting to

any corporation, association or individual any special or exclusive right, privilege or immunity.

(*g*) It prohibits all barter and commerce, by prohibiting any two or more persons from agreeing upon either the present or future price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever as between themselves, whether the same tends to the prejudice of the public interest or not, whether in restraint
22 of trade, whether reasonable or unreasonable under the circumstances and limitations of such fixing of prices of said commodities, without regard to the relation of the parties to such agreement or their purposes, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*h*) It arbitrarily discriminates as between the vendors and purchasers of such articles, in that it prohibits two or more vendors from agreeing among themselves to establish a reasonable price for such articles of merchandise, but does not prohibit the purchasers from agreeing to fix a price at which they may purchase said articles, and tends to assure, and does assure, to purchasers such prices as may be established by unhealthy and ruinous competition, but does not assure to the vendors protection or the right to protect themselves, by agreement or otherwise, against ruinous rates established either by unwholesome or unhealthy competition or the combination of purchasers, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*i*) It grants special privileges to the buyers of products of the character mentioned therein, by combination or otherwise, while denying to the manufacturers or vendors of the same the right to protect themselves against such combination, or assuring themselves of the means of realizing a reasonable profit for their capital, labor and skill, and in each of such respects it violates each of the foregoing provisions of the state and federal constitutions.

(*j*) It arbitrarily discriminates between different classes of products and between labor and capital, between different kinds of insurance companies, and between different kinds of insurance, and also between different classes of persons, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*k*) It applies to commodities and not to labor and other matters which may be the subject of combination, and thereby discriminates arbitrarily.

Wherefore this respondent asks to be dismissed with costs.

4. Respondent re-avers each and every allegation set forth
23 in division 3 of this return, and further respectfully shows that the informant claims that under the law of this state and the construction of its statutes the respondent in a *quo warranto* proceeding cannot attack the constitutionality of an act of the legislature, the provisions of which are invoked and sought to be enforced in said *quo warranto* proceedings, without admitting a violation of the said statute. And the informant claims that this court has so decided in the case of *The State ex inf. Crow, Attorney General*

v. The Firemen's Fund Insurance Company et al., 152 Mo., 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the state depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, hereby and herein invoked.

Wherefore respondent asks to be dismissed with costs.

5. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of Sections 8965, 8966, 8967, 8971, 8972, or 8978 of the Revised Statutes of Missouri, 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the fourteenth amendment to the Constitution of the United States, the provisions of which are hereby invoked.

Wherefore respondent asks to be dismissed with costs.

6. Among other things, the relief sought in this case and the penalties prescribed by Chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, is that none of the property purchased, owned, held and used by the respondent within the state of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any purpose, without incurring the penalties prescribed in
24 Section 8972. Upon the faith and in the reliance of the certificate granted to it by the state of Missouri to do business in the said state, as averred in the information, this respondent, long prior to the enactment of said Chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said state, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said state under the certificate as aforesaid. Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and construed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, towit: at least to the extent of 90 per cent thereof. Wherefore the respondent says that the provisions of said Section 8972 above mentioned, are in violation of Sections 4 and 30 of Article II, and Section 53 of Article IV of the Constitution of Missouri and of Section 8 of Article I of, and the fifth and fourteenth amendments to the Constitution of the United States, each and every provision of which this respondent now hereby expressly invokes in its behalf, for that the effect of the said statute and of the

enforcement thereof by granting the relief prayed by the present cause will be to deprive the respondent of its said property and its use without due process of law, to deny to this respondent the equal protection of the law, and to deprive it of life, liberty and property without due process of law, deprive respondent of the natural right to life, liberty and the enjoyment of the gains of its own industry, grant special and exclusive rights, privileges and immunities to others and interfere with respondent continuing to buy and sell products in and ship products as articles of commerce to and from foreign nations and different states. Said properties are used principally in the conduct of interstate commerce, so that the prohibition of the use thereof operates as a regulation of interstate commerce and as a restraint upon commerce among the several state- and territories and with the District of Columbia, within the meaning of the Act of Congress of July 2nd, 1890, which Act of Congress, by the express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by Congress by virtue of the power granted by the Federal Constitution. Said section 8972 is a part and parcel of an entire and complete system and the un-constitutionality of the above mentioned provision destroyes the entire chapter, or at least the article on which this action is based.

In complying with the laws of this state and in obtaining certificates and licenses to do business therein, as mentioned and set forth in the information, respondent paid large sums of money to the State of Missouri, which have been held and used by the said state, and on the faith of the statutes authorizing it to do business and the licenses issued, as stated in the information, respondent invested large sums of money in the State of Missouri. The licenses and rights to do business so granted by and acquired under the laws of Missouri were without any right or reservation on the part of the state to amend, alter or repeal the same. Among other rights thereby granted by the state to the respondent was one to make any and all reasonable contracts and agreements. No other kind of a contract was ever made by this respondent. Each of the provisions of Section 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised Statutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the provisions of Section 10 of Article I of the Constitution of the United States are violated.

Wherefore respondent asks to be dismissed with costs.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for said Respondent.

26 In the Supreme Court of the State of Missouri, October Term, 1904.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (of Indiana), WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Respondents.

Answer and Return of Republic Oil Company, One of the Above-Named Respondents.

Now comes said respondent and, for answer and return to the information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all the times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the state authorizing and permitting foreign corporations to do business therein, and having a license from the state authorities so to do; it was at all the times mentioned in the information engaged in the business of selling naptha, benzine, gasoline kerosene, lubricating oil and other products of
27 petroleum in the state of Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum, having expended many thousands of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the state of New York, for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all the times mentioned in the information was authorized to do business in this state, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the state for such purposes; at all times herein mentioned it was engaged in the business of buying and selling the products of petroleum in this state, as it was authorized to do by its articles of incorporation * * * by the laws of the state, and by the license aforesaid.

The Waters-Pierce Oil Company is now, and at all the times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the state of Missouri, for the purpose, among others, of refining petroleum, and buying

and selling the products thereof; and at all the times therein mentioned, was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

This respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding with either or any of the respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naptha,
28 benzine, gasoline, kerosene, lubricating oil or any or either of them, or any other product of petroleum in Missouri, or to control or limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in said business of buying or selling naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri between the respondents or others engaged in like business, or deceive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondents or either of them, fixed or maintained the prices of naptha, benzine, gasoline, kerosene or lubricating oil, or any or either of them, or any other product of petroleum sold or offered for sale by it, or either of them, in this state, nor controlled or limited the trade of said products in this state; nor prevented or destroyed competition in the purchase or sale of said products or any or either of them in this state, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust, agreement, confederation, combination or understanding.

This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the state of Missouri between the Standard Oil Company and the Waters-Pierce Oil Company. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell any of said products in this state in a territory therein lying for the most part south of the Missouri River, nor is any such territory by any agreement assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or under-
29 standing, agreed not to sell, and does not sell any of said products in certain territory in Missouri, lying mostly north

of the Missouri River, nor is any such territory, by any agreement, assigned to the Standard Oil Company. It is not true that the Republic Oil Company, according to any combination, confederation, agreement or understanding, had by the respondents, or any of them, sells oil in different parts of the state in territory in which by any agreement the Standard Oil Company does not sell and in which by any agreement the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agreement or otherwise through the sale of oil by the Republic Oil Company is to supply oil to such retail dealers in the state, or others who, by reason of prejudice or otherwise, against the Waters-Pierce Oil Company, or the Standard Oil Company, or for any other reason, refuse to trade with either of said respondents in said alleged territory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, combination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondents in the accomplishment of the purposes of any pool, trust, agreement, confederation or understanding, to crush out competitors in the sale of petroleum, by temporarily reducing the price thereof through the sales made by the said Republic Oil Company, or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the state of Missouri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of products of petroleum between the said Republic Oil Company and the Waters-Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are separate and distinct corporations, but it is not true that either makes any false pretenses to pursuing an independent business as legitimate competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool, trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents or either of them, under and by virtue of any pool, trust, combination, agreement or understanding, maintained or entered into by them, deceive and mislead the public, or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the refining of petroleum; but it is not true that by virtue of any understand-

ing, combination, confederation, or agreement made or entered into by respondents, or any of them, or in addition to other objects or purposes, or in addition to any other act of any respondent done in compliance with any such combination, understanding, confederation or agreement, or in the enforcement thereof, that the Standard Oil Company has agreed to sell, or sells said products of petroleum in the state of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

31 It is not true that respondents or either of them by reason of any combination, pool, trust or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust, or understanding, have been able to control the supply, or do control and supply to the retail dealers and to the general public in the state from Eighty-five to ninety per cent or any other per cent of all the naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold for general consumption in the state.

It is not true that by virtue of any pool, trust, agreement, combination, confederation or understanding entered into by respondents, or by reason of any of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents or either of them have been able to control, or do control the price of the products of petroleum in the state, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the state, or have limited the trade therein, or have driven out competition in said business.

It is not true that any combination, confederation, pool, trust, or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them or either of them have deprived or do deprive the public of free, full or wholesome competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occurring to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the products of petroleum, or by reason of any deception accom-

32 plished by respondents or otherwise that said respondents or either of them are now wilfully or unlawfully or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or controlling the prices of the products of petroleum sold in the state. It is not true, that respondents or either of them have, since the — day of ——, 1901, and up to the present time, or at any time grossly or otherwise offended against the laws of this state, or wilfully or

flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges not granted to corporations by the laws of Missouri by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust, confederation or undertsanding, made or maintained, the respondents are now in this state unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the state of Missouri for the said products of petroleum, or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchises granted to respondents by this state, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondents by the state, and it is not true that there is or has been by any act of respondents any injury to the public.

Wherefore respondents asks to be dismissed with costs.

2. The facts stated in the information are wholly insufficient to justify a judgment in favor of informant.

Wherefore respondent asks to be dismissed with costs.

3. And this respondent, complaining and protesting that it is not in law bound to answer said information, states:

33 The information herein is based upon the alleged violation of the provisions of each of sections 8965, 8966, 8967, 8968, 8971, 8972, 8978 of the Revised Statutes of Missouri, 1899, and seeks to enforce the provisions of each of said sections. Each of said sections is unconstitutional and void, for each of the following reasons:

(*a*) It violates the fourteenth amendment to the Constitution of the United States, wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws, nor make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

(*b*) It violates the provisions of Section 8, Article I, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several states and Indian tribes, in which commerce respondent is engaged.

(*c*) It violates Section 10 of Article I of the Constitution of the United States, which provides that no state shall pass any *ex post facto* law, or law impairing the obligations of contracts.

(*d*) It violates Section 4, Article 2, of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(*e*) It violates the provisions of Section 30, Article 2, of the

Constitution of the State of Missouri, providing that no person shall be deprived of life, liberty or property without due process of law.

(*f*) It violates Section 53 of Article 4 of the Constitution of the State of Missouri, which forbids the legislature from granting to any corporation, association or individual any special or exclusive right, privilege or immunity.

(*g*) It prohibits all barter and commerce, by prohibiting any two or more persons from agreeing upon either the present or future price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, of any product of mining or any article or thing whatsoever as between themselves whether the same
34 tends to the prejudice of the public interest or not, whether in restraint of trade, whether reasonable or unreasonable under the circumstances and limitations of such fixing of prices of said commoditites, with-out regard to the relation of the parties to such agreement or their purposes, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*h*) It arbitrarily discriminates as between the vendors and purchasers of such articles, in that it prohibits two or more vendors from agreeing among themselves to establish a reasonable price for such articles of merchandise, but does not prohibit the purchasers from agreeing to fix a price at which they may purchase said articles, and tends to assure, and does assure, to purchasers such prices as may be established by unhealthy and ruinous competition, but does not assure to the vendors protection or the right to protect themselves, by agreement or otherwise, against ruinous rates established either by unwholesome or unhealthy competition or the combination of purchasers, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*i*) It grants special privileges to the buyers of products of the character mentioned therein, by combination or otherwise, while denying to the manufacturers or vendors of the same the right to protect themselves against such combination, or assuring themselves of the means of realizing a reasonable profit for their capital, labor and skill, and in each of such respects it violates each of the foregoing provisions of the state and federal constitutions.

(*j*) It arbitrarily discriminates between different classes of products and between labor and capital, between different kinds of insurance companies, and between different kinds of insurance, and also between different classes of persons, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*k*) It applies to commodities and not to labor and other matters which may be the subject of combination, and thereby discriminates arbitrarily.

Wherefore this respondent asks to be dismissed with costs.

4. Respondent re-avers each and every allegation set forth
35 in division 3 of this return, and further respectfully shows that the informant claims that under the law of this state and the construction of its statutes the respondent in a *quo warranto* pro-

ceeding cannot attack the constitutionality of an act of the legislature, the provisions of which are invoked and sought to be enforced in said *quo warranto* proceedings, without admitting a violation of the said statute. And the informant claims that this court has so decided in the case of The State ex inf. Crow, Attorney General v. The Firemen's Fund Insurance Company et al., 152 Mo., 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the state depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, hereby and herein invoked.

Wherefore respondent asks to be dismissed with costs.

5. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of Sections 8965, 8966, 8967, 8971, 8972, or 8978 of the Revised Statutes of Missouri, 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the fourteenth amendment to the Constitution of the United States, the provisions of which are hereby invoked.

Wherefore respondent asks to be dismissed with costs.

6. Among other things, the relief sought in this case and the penalties prescribed by Chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, is that none of the property purchased, owned, held and used by the respondent within the state of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any purpose,
36 without incurring the penalties prescibed in Section 8972.

Upon the faith and in the reliance of the certificate granted to it by the state of Missouri to do business in the said state, as averred in the information, this respondent, long prior to the enactment of said Chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said state, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said state under the certificate as aforesaid. Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and constru-ed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, towit: at least to the extent of 90 per cent thereof. Wherefore the respondent says that the provisions of said Section 8972 above mentioned, are in violation of Sections 4 and 30 of Article II, and Section 53 of Article IV of the Constitution of Missouri and

of Section 8 of Article I of, and the fifth and fourteenth amendments to the Constitution of the United States, each and every provision of which this respondent now hereby expressly invokes in its behalf, for that the effect of the said statute and of the enforcement thereof by granting the relief prayed by the present cause will be to deprive the respondent of its said property and its use without due process of law, to deny to this respondent the equal protection of the law, and to deprive it of life, liberty and property without due process of law, deprive respondent of the natural right to life, liberty and the enjoyment of the gains of its own industry, grant special and exclusive rights, privileges and immunities to others and interfere with respondent continuing to buy and sell products in and ship products as articles of commerce to and from foreign nations and different states. Said properties are used principally in the conduct of interstate commerce, so that the prohibition of the use thereof operates as a regulation of interstate commerce and
37 as a restraint upon commerce among the several states and territories and with the District of Columbia, within the meaning of the Act of Congress of July 2nd, 1890, which Act of Congress, by the express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by Congress by virtue of the power granted by the Federal Constitution. Said section 8972 is a part and parcel of an entire and complete system and the un-constitutionality of the above mentioned provision destroys the entire chapter, or at least the article on which this action is based.

In complying with the laws of this state and in obtaining certificates and licenses to do business therein, as mentioned and set forth in the information, respondent paid large sums of money to the State of Missouri, which have been held and used by the said state, and on the faith of the statutes authorizing it to do business and the licenses issued, as stated in the information, respondent invested large sums of money in the State of Missouri. The licenses and rights to do business so granted by and acquired under the laws of Missouri were without any right or reservation on the part of the state to amend, alter or repeal the same. Among other rights thereby granted by the state to the respondent was one to make any and all reasonable contracts and agreements. No other kind of a contract was ever made by this respondent. Each of the provisions of Section- 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised Statutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the provisions of Section 10 of Article I of the Constitution of the United States are violated.

Wherefore respondent asks to be dismissed with costs.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for said Respondent.

38 And afterwards, to-wit, on the 14th day of April, 1905, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resp.

Comes now the Waters Pierce Oil Company, by attorney, and files its return herein.

Which said return is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Missouri, October Term, 1904.

STATE OF MISSOURI ex Rel. HERBERT S. HADLEY, Attorney General, Informant,
v.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Respondents.

Answer of Waters-Pierce Oil Company.

Now comes Waters Pierce Oil Company, one of the respondents herein, and for its separate answer and return to the information of the Attorney General in the above entitled cause, and to the writ issued thereon, states that it is true as alleged in said information that said Waters Pierce Oil Company is, and at all times in said information mentioned, was, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and that at all times in said information mentioned it was
39 engaged in the business of buying and selling the products of petroleum; and that by warrant and authority of said laws of the State of Missouri and its due organization thereunder, this respondent holds, uses and exercises its corporate rights, privileges and franchises in this State.

And further answering, Waters Pierce Oil Company denies that between the — day of ——, 1901, and the 29th day of March, 1905, or at any time, it created, entered into or became a member of a pool, trust, agreement, confederation, combination or understanding with the Standard Oil Company and the Republic Oil Company, or either of them, for any of the purposes which are in said information set forth; or that it, Waters Pierce Oil Company, has in any manner been guilty of any of the things which are in said information alleged or charged against it.

And further said Waters Pierce Oil Company denies each and every allegation and charge in said information which is directed against it, Waters Pierce Oil Company, and which is not herein specifically admitted.

Wherefore this respondent asks to be dismissed with costs.

FINKELNBURG, NAGEL AND KIRBY,
J. D. JOHNSON,
BOYLE, PRIEST AND LEHMANN,
Attorneys for Waters-Pierce Oil Company, Respondent.

And afterwards, to-wit, on the 22nd day of April, 1905, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL COMPANY et al., Resp.

Comes now the said informant, and files his motions to strike out the returns of the Standard Oil Company and the Republic Oil Company.

Which said motions are in words, and figures as follows, to-wit:

40 In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

STATE ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Corporations, Respondents.

Informant's Motion to Strike Out the Answer and Return of the Republic Oil Company, one of the Above-named Respondents.

I.

Comes now the informant, Herbert S. Hadley, Attorney General of the State of Missouri, who in this behalf prosecutes in behalf of the State, and moves the Court to make an order striking out of respondent's return and answer the following allegation therein: "2. The facts stated in the information are wholly insufficient to justify judgment in favor of respondent, wherefore, respondent asks to be dismissed with costs", which said allegation constitutes the second defense pleaded in said answer and return, for the following reasons:

First. That said allegation constitutes an attempted plea in the nature of a demurrer to the information herein which said plea is joined with an answer to the merits and is, therefore, inconsistent, contradictory and duplicitous.

Second. That said plea constitutes neither, first, a justification, nor, second, a disclaimer.

Third. Because said plea raises only an issue of law after said respondent in said answer and return made a general and specific denial of the facts pleaded in said return and answer.

II.

Comes now the Informant and moves the Court to strike
41 out the third, fourth and sixth defenses pleaded in said answer and return for the following reasons:

First. The matters thus pleaded constitute an attempt both to justify and disclaim, and as such contain allegations that are

repugnant and inconsistent with each other, therefore, rendering the pleading double and open to the objection of duplicity.

Third. That it is argumentative, evasive and not wholly responsive to the charge in the information.

Fourth. Because said portion of said answer and return presents and blends together an issue of law and an issue of fact as defenses to the other charge of abuse of corporate powers and franchises contained in the information and is, therefore, bad for duplicity.

Fifth. Because the same contains and consists of mere statements of law and legal conclusions, without pleading facts responsive to the charge in the information.

Sixth. Because the allegations of law contained therein are wholly insufficient as a legal justification of the charge contained in the information.

Seventh. That by said defenses it is attempted to raise the plea of the unconstitutionality of Sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978, Revised Statutes of Missouri, 1899, which said attempted plea is inconsistent with and contradictory of the denial made by said respondent in said answer and return that it has not done or committed any of the acts charged in said information.

III.

Informant moves the Court to strike out all that portion of respondent's answer and return, beginning with the word "if" line 5, page 14, and ending with the word "costs" line 18, page 14, which constitutes the Fifth defense pleaded by said respondent, for the following reasons:

First. That by said defense there is an attempted plea to the jurisdiction of this Court to hear and determine this proceeding, which plea is wholly insufficient in law.

42 Second. Because said defense is joined with other alleged defenses which are inconsistent and contradictory and causes said answer and return to be duplicitous.

Third. Because it states a conclusion of law.

Fourth. Because the record in this case shows that the said respondent has entered his appearance and has answered upon the merits to the information herein, thereby waiving any question of the jurisdiction of this Court over said respondent.

IV.

Comes now the Informant and moves the Court to make an order striking out the whole of said return and answer and to render a judgment of ouster against said respondent for the following reasons:

First. Because the same is not responsive to the information and writ herein.

Second. Because the same is insufficient in that it is neither a plea in justification, nor a disclaimer.

Third. Because the defenses attempted to be pleaded in said re-

turn are contradictory, inconsistent and repugnant with each other, thereby rendering said pleading duplicitious.

Fourth. That the defenses attempted to be pleaded in said answer and return undertake to deny the truth of the facts pleaded in said information, and also to admit the truth of the facts pleaded in said information.

Fifth. That said attempted defenses pleaded in said answer and return undertake to raise the question of the constitutionality of Sections 8965, 8966, 8967, 8968, 8971, 8972, and 8978, Revised Statutes of Missouri, 1899, while at the same time denying that said respondent has violated any of the provisions of said Sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978, R. S. Mo., 1899.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
Ass't Att'y Gen'l.

43 In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

STATE ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Informant's Motion to Strike Out the Answer and Return of the Standard Oil Company, One of the Above-named Respondents.

I.

Comes now the informant, Herbert S. Hadley, Attorney General of the State of Missouri, who in this behalf prosecutes in behalf of the State, and moves the Court to make an order striking out of respondent's return and answer the following allegation therein: "2. The facts stated in the information are wholly insufficient to justify judgment in favor of respondent, wherefore, respondent asks to be dismissed with costs," which said allegation constitutes the second defense pleaded in said answer and return, for the following reasons:

First. That said allegation constitutes an attempted plea in the nature of a demurrer to the information herein which said plea is joined with an answer to the merits and is, therefore, inconsistent, contradictory and duplicitious.

Second. That said plea constitutes neither, first, a justification, nor, second, a disclaimer.

Third. Because said plea raises only an issue of law after said respondent in said answer and return made a general and specific denial of the facts pleaded in said return and answer.

II.

Comes now the Informant and moves the Court to strike
44 out the third, fourth and sixth defenses pleaded in said answer and return for the following reasons:

First. The matters thus pleaded constitute an attempt both to justify and disclaim, and as such contain allegations that are repugnant and inconsistent with each other, therefore, rendering the pleading double and open to the objection of duplicity.

Third. That is is argumentative, evasive and not wholly responsive to the charge in the information.

Fourth. Because said portion of said answer and return presents and blends together an issue of law and an issue of fact as defenses to the other charge of abuse of corporate powers and franchises contained in the information and is, therefore, bad for duplicity.

Fifth. Because the same contains and consists of mere statements of law and legal conclusions, without pleading facts responsive to the charge in the information.

Sixth. Because the allegations of law contained therein are wholly insufficient as a legal justification of the charge contained in the information.

Seventh. That by said defenses it is attempted to raise the plea of the unconstitutionality of Sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978, Revised Statutes of Missouri, 1899, which said attempted plea is inconsistent with and contradictory of the denial made by said respondent in said answer and return that it has not done or committed any of the acts charged in said information.

III.

Informant moves the Court to strike out all that portion of respondent's answer and return, beginning with the word "if" line 5, page 14, and ending with the word "costs" line 18, page 14, which constitutes the Fifth defense pleaded by said respondent, for the following reasons:

First. That by said defense there is an attempted plea to the jurisdiction of this Court to hear and determine this proceeding, which plea is wholly insufficient in law.

45 Second. Because said defense is joined with other alleged defenses which are inconsistent and contradictory and causes said answer and return to be duplicitous.

Third. Because it states a conclusion of law.

Fourth. Because the record in this case shows that the said respondent has entered his appearance and has answered upon the merits to the information herein, thereby waiving any question of the jurisdiction of this Court over said respondent.

IV.

Comes now the Informant and moves the Court to make an order striking out the whole of said return and answer and to render a judgment of ouster against said respondent for the following reasons:

First. Because the same is not responsive to the information and writ herein.

Second. Because the same is insufficient in that it is neither a plea in justification, nor a disclaimer.

Third. Because the defenses attempted to be pleaded in said return are contradictory, inconsistent and repugnant with each other, thereby rendering said pleading duplicitous.

Fourth. That the defenses attempted to be pleaded in said answer and return undertake to deny the truth of the facts pleaded in said information, and also to admit the truth of the facts pleaded in said information.

Fifth. That said attempted defenses pleaded in said answer and return undertake to raise the question of the constitutionality of Sections 8965, 8966, 8967, 8968, 8971, 8972, and 8978, Revised Statutes of Missouri, 1899, while at the same time denying that said respondent has violated any of the provisions of said Sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978, R. S. Mo., 1899.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
Ass't Att'y Gen'l.

46 And afterwards, to-wit, on the 22nd day of April, 1905, the further following proceedings were had in said cause, viz:

STATE ex Inf. H. S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL CO. et al., Respondents.

Now at this day come the state of Missouri by Herbert S. Hadley, its Attorney General, informant herein, and Republic Oil Company and Standard Oil Company, respondents, by their attorneys, Frank Hagerman, and informant herein withdraws, without prejudice, the motions heretofore filed asking for an order of court striking out certain portions of the answer and return of said respondents and for judgment upon the pleadings: And thereupon each of said respondents, by leave of court, withdraws its original answer and return and forthwith files an amended answer and return, without prejudice, subject to its right to hereafter raise and present to the court for decision the questions pleaded in paragraphs two, three, four, five and six of said original answer and return.

And afterwards, to-wit, on the 3rd day of May, 1905, the farther following proceedings were had in said cause, viz:

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY et al., Respondents.

Now at this day, it appearing to the court from the pleadings in the above entitled cause that issues of fact are joined therein, there-

fore, upon motion and request of Herbert S. Hadley, Attorney General, that a Special Commissioner be appointed by the
47 court to take the testimony upon the issues joined in said cause, it is ordered by the court that Robert A. Anthony, Esq., of Fredericktown, Mo., be and he is hereby appointed Special Commissioner to take the testimony upon the issues joined in said cause, with full power and authority to issue subpœnas, compel the attendance of witnesses, the production of papers, books and other documents, and to issue attachments therefor and to hear and determine all objections to testimony and to admit or exclude the same in the same manner and to the same extent as this court might in the trial of the case before the court, and to report the testimony, with his findings of fact thereon, to this court with convenient speed, provided that the report shall be filed by the first day of the October Term, 1905, unless further continued for good cause; exceptions to the findings of fact so made by said special commissioner to be filed by either party so desiring within ten days after the filing of the commissioner's report and findings.

And afterwards, to-wit, on the 10th day of October, 1905, the further following proceedings were had in said cause, viz:

STATE ex Rel. Atty. Gen., Inf.,
vs.
STAND. OIL CO. et al., Resp.

Come now the said respondents by attorney, and file their motion to set aside the order to produce witnesses and documents.
Which said motion is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, October Term, 1905.

48 STATE OF MISSOURI ex Rel. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY OF INDIANA, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Motion to Set Aside Order to Produce Witnesses and Documents Demanded by Informant.

Now comes Nagle & Kirby, John B. Johnson and H. S. Priest, who are counsel of record for the respondent Waters-Pierce Oil Company in the above entitled cause, and move the Court to set aside the order made and notice signed by the Honorable James B. Fox, a Judge of this Court, on September 28, 1905, in response to the petition of the Attorney General, notifying them to produce before R. A. Anthony, Commissioner appointed in the above entitled cause, C. L. Nichols and W. T. McKee, at the time and place set out in said order and notice, and produce the document de-

manded by informant, as specified therein, for the following reasons:

First. Said order was improperly and improvidently granted.

Second. Because they, and each of them, bear no relation to the respondent, the Republic Oil Company, whatsoever, and no relation to the respondent, the Waters-Pierce Oil Company, other than that of attorneys and client in this cause, and such relation does not impose upon them the duty of having the witnesses named, or the books specified in said order and notice, before the Commissioner at the time named, or at any other time.

Third. Because the said attorneys of record of the Waters-Pierce Oil Company have no power, authority or jurisdiction over the said C. L. Nichols and W. T. McKee, or either of them, to compel
49 the attendance of either of said witnesses named, at the place named in said notice and order, or elsewhere, to testify before said Commissioner.

Fourth. Because the document named in said order and notice is not, and has never been, in the possession or under the control of either of said attorneys, nor are either of them required by said notice to attend before the Commissioner as witnesses. This proceeding is based and founded upon Article III of Chapter 143, of the Revised Statutes of Missouri, 1899, which does not contemplate an order to produce by the Court, or other officer authorized to take evidence, upon any other person than an officer, director, agent or employé of the Republic Oil Company, which order can only be made upon such witnesses whose attendance has been procured to testify before the tribunal authorized to take the evidence.

Fifth. Because it was and is beyond the power of this Court to require of these attorneys the duties of serving process for the purpose of procuring the attendance of informant's witnesses in the cause, thus taking the time, labor and expenditure of the attorneys to procure witnesses on behalf of the state, without any compensation being made therefor, and compelling the attorneys to perform duties antagonistic to the interests of their client, and the production of evidence against their client and in favor of their adversary.

Sixth. Because the statute under which said application is made does not apply to proceedings by information in the nature of *quo warranto*, but applies solely to actions commenced by the Attorney General, or some prosecuting attorney by the direction of the Attorney General, in equity, in the Circuit Court of the State, and does not confer power, authority or jurisdiction upon the Court to order the production of witnesses, or books and papers before the commissioner.

Seventh. Because said statute, under which said application is made, is in contravention and violation of Sections 11 and 23, of Article II of the Constitution of Missouri.

Eighth. Because the said statute is in contravention and violation to Section 53, Article IV of the Constitution of Missouri.
50 Ninth. Because said statute is in contravention and violation of the Fourteenth Amendment to the Constitution of the United States, in that it condemns without due process of law,

and in that it denies to the defendant the equal protection of the law, and discriminates between resident and non-resident persons and corporations.

Tenth. Because the said statute is an attempt to secure the evidence of witnesses from without this state, by constructive service, and without providing compensation to said witnesses for their time and expenses, and thus deprives the respondent and its attorneys of any compensation for the service and expense of procuring the attendance of such witnesses, books and papers.

Eleventh. Because said statute is an unlawful attempt to extend the process to be issued thereunder, beyond the territorial limits of this state.

Twelfth. Because said statute is in contravention and violation of Section 25, Article II, of the Constitution of Missouri, in that it inflicts cruel and unusual punishment by depriving the respondent of its constitutional right to be heard in its defense of informant's action, for the default, omission or contempt of another over whom said respondent has no power or control to compel attendance.

Thirteenth. Because by the laws of the State of New York, under which the respondent, the Republic Oil Company, is organized and incorporated it is required to keep its stock books in the State of New York, and has no power or authority to bring the same into the State of Missouri, and can not do so without violating the laws of the State of its creation.

Fourteenth. Because the order was made upon an ex parte petition of the Attorney General without any notice to any attorney, or any respondent in this cause.

NAGEL & KIRBY,
JOHN D. JOHNSON,
H. S. PRIEST,
51 *Attorneys of Record for Respondent,*
Waters-Pierce Oil Company.

STATE OF MISSOURI,
County of Jackson:

——— ———, ——— ——— each upon his oath says, he has read the foregoing motion, and the facts therein stated are to his knowledge true.

——— ———.
——— ———.

Subscribed and sworn to before me this — day of October, 1905. My commission expires —.

———,
Notary Public.

52 And afterwards, to-wit, on the 23rd day of October, 1905, the further following proceedings were had in said cause, viz.:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Comes now R. A. Anthony, commissioner herein, and certifies to this court certain questions.

Which said certificate of the commissioner is in the words and figures as follows, to-wit:

Supreme Court of Missouri.

Before Robert A. Anthony, Commissioner.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY et al., Respondents.

Subpœna Duces Tecum.

The State of Missouri to C. M. Adams and R. B. Backus:

You are hereby commanded, that setting aside all manner of excuses and delay, you be and appear in proper person and to produce at said time and place the stock book of the Waters-Pierce Oil Company and any other papers, books and documents now in your possession, showing the names of the holders or owners of stock in the Waters-Pierce Oil Company from January 1, 1901, up to March 29, 1905, and any and all papers, books, documents, checks, vouchers and receipts showing payment of dividends to holders or owners of stock in the Waters-Pierce Oil Company, and all papers,
53 books, documents, letters or copies of letters pertaining to correspondence in relation to the division of trade territory in the State of Missouri between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana; and to produce at said time and place any map now in your possession showing the division of trade territory in the State of Missouri between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, before the undersigned commissioner appointed by the Supreme Court of Missouri to take the testimony in the above entitled cause at the Court Room of the St. Louis Court of Appeals in the City of St. Louis Missouri on Tuesday October 17th 1905 at 10 o'clock a. m. of that day, then and there to testify and the truth to speak, in a certain matter of controversy now pending in said Supreme Court, wherein the State of Missouri, ex inf. Herbert S. Hadley, Attorney General, is plaintiff, and Standard Oil Company, et al, are defendants, on the part of said plaintiff, and this you will in no wise omit. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand this 3rd day of October, 1905.

ROBERT A. ANTHONY,
Commissioner.

I certify, That I served the within Subpœna in the City of St. Louis and State of Missouri on the 14th day of October, 1905, by delivering a true copy of the same to the within named C. M. Adams, at the offices of the Waters-Pierce Oil Company, in the building of the National Bank of Commerce in said city.

AUGUSTUS P. YORE, JR.

Subscribed and sworn to before me this 16th day of October, 1905.

____ ____,
Clerk of the Circuit Court for Criminal Causes.

____ ____,
Deputy Clerk.

54 In the Supreme Court of Missouri.

Before Honorable Robert A. Anthony, Commissioner.

THE STATE OF MISSOURI on Information of HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY OF INDIANA, WATERS PIERCE OIL CO., and REPUBLIC OIL CO., Respondents.

Now comes the Waters Pierce Oil Company, one of the Respondents in the above entitled cause, and moves the Commissioner to quash, vacate, and for naught hold the subpœna *duces tecum* heretofore issued, directed to Mr. C. M. Adams and commanding him, the said Adams, to be and appear in person and to have and produce before the Commissioner in the above entitled cause, on Tuesday, October 17, 1905, to-wit: "The stock book of the Waters-Pierce Oil Co. and any other papers, books and documents now in your possession, showing the names of the holders or owners of stock in the Waters-Pierce Oil Co. from January 1, 1901 up to March 29, 1905, and any and all papers, books, documents, checks, vouchers and receipts, showing payments of dividends to holders or owners of stock in the Waters Pierce Oil Co., and all papers, books, documents, letters or copies of letters pertaining to correspondence in relation to the trade territory in the State of Missouri, between the Waters Pierce Oil Co. and the Standard Oil Co. of Indiana, and to produce at said time and place any map now in your possession showing the division of trade territory in the State of Missouri between the Waters Pierce Oil Co. and the Standard Oil Co. of Indiana."

55 1. And for ground for its said motion, the said Waters Pierce Oil Company states that the said C. M. Adams is now, and was at the time he was served with said subpœna, the Secretary and Treasurer of said Company, and that whatever papers he has in his custody or control which he is commanded to produce by said subpœna *duces tecum* he has as said officer of said Waters Pierce Oil Co. and not otherwise; that said papers, books and documents are

the papers, books, documents and property of the said Waters Pierce Oil Co. and they are in the custody and control of said Waters Pierce Oil Company through the said C. M. Adams and other of its officers; that the said C. M. Adams is not in possession of, nor has he the custody or control of, in his individual caapcity, any of the books and papers in question, and that therefore the said subpœna *duces tecum* is in effect, as well as in fact, a subpœna *duces tecum* or order on the said Waters Pierce Oil Co. for the production of said books and papers.

2. That the premises considered, the said subpœna *duces tecum* is an attempted invasion of the constitutional rights guaranteed to said Waters Pierce Oil Co. by Sect. 2, Article 2 of the Constitution of Missouri, and Article 2 of Amendments to the United States Constitution against unreasonable searches and seizures.

3. Said subpœna *duces tecum* undertakes to compel said Waters Pierce Oil Co., through its said officers, to produce evidence against itself in a quasi criminal case or in a case in which a penalty is sought to be recovered against it, and in violation of Section 23, Article 2, of the Constitution of Missouri, and Article 5 of the Amendments to the U. S. Constitution.

4. The said subpœna also seeks to deprive said Respondent of its liberty and property without due process of law, and denies to it the equal protection of the law, contrary to the provisions of Section 30, Article 2 of the Constitution of Missouri, and Section 1, Article 14, of Amendments to the U. S. Constitution.

5. The said subpœna is not sufficiently definite and specific
56 in the description of the books and papers ordered to be produced, to make the same enforcible or to entitle the State to their production under the commands of said subpœna.

H. S. PRIEST,
NAGEL AND KIRBY,
J. D. JOHNSON,
Attorneys for Waters Pierce Oil Co., Respondents.

STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before Robert A. Anthony, Special Commissioner in the above entitled cause, C. M. Adams, who being duly sworn on oath, says that he is the Secretary of the Waters Pierce Oil Company, and the Adams in the subpœna *duces tecum* mentioned in the foregoing motion, and that the matters of fact stated in the said motion are true.

C. M. ADAMS.

Sworn to and subscribed before me, this, the 17th day of October, 1905.

ROBERT A. ANTHONY,
Special Commissioner.

In the Supreme Court, October Term, 1905.

No. 12988.

STATE ex Informatione HERBERT S. HADLEY, Attorney General of Missouri, Informant,
vs.
STANDARD OIL COMPANY, REPUBLIC OIL COMPANY, and WATERS-PIERCE OIL COMPANY, Respondents.

To the Hon. Supreme Court of Missouri:

57 Comes now Robert A. Anthony, Special Commissioner appointed in the above entitled cause by this Court to take the testimony on the issues between the Informant and Respondents, and shows to the Court that on the 17th. day of October, 1905, he was engaged in the performance of his duties as such Commissioner at the City of St. Louis, Missouri, and that there were present Herbert S. Hadley, Attorney General of the State, and Rush C. Lake, representing the Informant; Henry S. Priest, John D. Johnson and Charles Nagel, representing the Respondent Waters-Pierce Oil Company, and Alfred D. Eddy and Frank Hagerman, representing the Respondents Standard Oil Company and Republic Oil Company.

That among other proceedings had before this Commissioner, at said time and place, the following subpœna *duces tecum* was returned to the Commissioner duly served on one C. M. Adams, to-wit:

Supreme Court of Missouri.

Before Robert A. Anthony, Commissioner.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY et al., Respondents.

Subpœna Duces Tecum.

The State of Missouri to C. M. Adams and R. B. Backus:

You are hereby commanded, that setting aside all manner of excuse and delay, you be and appear in proper person and to produce at said time and place the stock book of the Waters-Pierce Oil Company, and any other papers, books and documents now in your possession, showing the names of the holders or owners of stock in the Waters-Pierce Company from January 1, 1901, up to March 29, 1905, and any and all papers, books, documents, checks, vouchers and receipts showing payment of dividends to holders or owners of stock in the Waters-Pierce Oil Company, and all papers, books docu-

ments, letters or copies of letters pertaining to correspondence
58 in relation to the division of trade territory in the State of Missouri between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana; and to produce at said time and place any map now in your possession showing the division of trade territory in the State of Missouri between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, before the undersigned commissioner appointed by the Supreme Court of Missouri to take the testimony in the above entitled cause at the Court Room of the St. Louis Court of Appeals in the City of St. Louis, Missouri, on Tuesday, October 17th, 1905, at 10 o'clock A. M. of that day, then and there to testify and the truth to speak, in a certain matter of controversy now pending in said Supreme Court, wherein the State of Missouri, ex inf. Herbert S. Hadley, Attorney General, is plaintiff, and Standard Oil Company, et al., are defendants, on the part of said plaintiff, and this you will in no wise omit. And the person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon his return.

Witness my hand this 3rd. day of October, 1905.

(Signed) ROBERT A. ANTHONY,
Commissioner.

I certify, that I served the within subpœna in the City of St. Louis and State of Missouri, on the 14th. day of October, 1905, by delivering a true copy of the same to the within named C. M. Adams, at the offices of the Waters-Pierce Oil Company, in the building of the National Bank of Commerce in said city.

(Signed) AUGUSTUS P. NORE, Jr.

That in pursuance to the commands of said subpœna said C. M. Adams appeared before the Commissioner in person. Whereupon, and before said C. M. Adams was sworn as a witness, counsel for Respondent Waters-Pierce Oil Company filed the following motion to quash said subpœna *duces tecum*, to-wit:

59 In the Supreme Court of Missouri.

Before Honorable Robert A. Anthony, Commissioner.

THE STATE OF MISSOURI on Information of HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY OF INDIANA, WATERS PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Now comes the Waters Pierce Oil Company, one of the Respondents in the above entitled cause, and moves the Commissioner to quash, vacate and for naught hold the subpœna *duces tecum* heretofore issued, directed to Mr. C. M. Adams and commanding him, the

said Adams, to be and appear in person and to have and produce before the Commissioner in the above entitled cause, on Tuesday, October 17, 1905, to-wit: "The stock book of the Waters Pierce Oil Co. and any other papers, books and documents now in your possession, showing the names of the holders or owners of stock in the Waters Pierce Oil Co. from January 1, 1901, up to March 29, 1905, and any and all papers, books, documents, checks, vouchers and receipts, showing payment of dividends to holders or owners of stock in the Waters Pierce Oil Co., and all papers, books, documents, letters or copies of letters pertaining to correspondence in relation to the trade territory in the State of Missouri, between the Waters Pierce Oil Co. and the Standard Oil Co. of Indiana, and to produce at said time and place any map now in your possession showing the division of trade territory in the State of Missouri between the Waters Pierce Oil Co. and the Standard Oil Co. of Indiana."

1. And for ground for its said motion, the said Waters Pierce Oil Company states that the said C. M. Adams is now, and was at the time he was served with said subpœna, the Secretary and Treasurer of said Company, and that whatever papers he has in his custody or control which he is commanded to produce by said subpœna *duces tecum* he has as said officer of said Waters Pierce Oil Co. and not otherwise; that said papers, books and documents are the papers, books, documents and property of the said Waters Pierce Oil Co. and they are in the custody and control of said Waters Pierce Oil Company through the said C. M. Adams and other of its officers; that the said C. M. Adams is not in possession of, nor has he the custody or control of, in his individual capacity, any of the books and papers in question, and that therefore the said subpœna *duces tecum* is in effect, as well as in fact; a subpœna *duces tecum* or order on the said Waters Pierce Oil Co. for the production of said books and papers.

2. That the premises considered, the said subpœna *duces tecum* is an attempted invasion of the constitutional rights guaranteed to said Waters Pierce Oil Co. by Sect. 2, Article 2 of the Constitution of Missouri, and Article 2 of Amendments to the United States Constitution against unreasonable searches and seizures.

3. Said subpœna *duces tecum* undertakes to compel said Waters Pierce Oil Co., through its said officers, to produce evidence against itself in a quasi criminal case or in a case in which a penalty is sought to be recovered against it, and in violation of Section 23, Article 2, of the Constitution of Missouri, and Article 5 of the amendments to the U. S. Constitution.

4. The said subpœna also seeks to deprive said Respondent of its liberty and property without due process of law, and denies to it the equal protection of the law, contrary to the provisions of Section 30, Article 2 of the Constitution of Missouri, and Section 1 Article 14 of Amendments to the U. S. Constitution.

5. The said subpœna is not sufficiently definite and specific in the description of the books and papers ordered to be produced, to make

the same enforcible or to entitle the State to their production under the commands of said subpœna.

61 (Signed) H. S. PRIEST,
J. D. JOHNSON,
NAGEL & KIRBY,
Attorneys for Waters-Pierce Oil Co., Respondent.

STATE OF MISSOURI,
City of St. Louis, ss:

Personally appeared before Robert A. Anthony, Special Commissioner in the above entitled cause, C. M. Adams, who being duly sworn on oath, says that he is the Secretary of the Waters Pierce Oil Company, and the Adams in the subpœna *duces tecum* mentioned in the foregoing motion, and that the matters of fact stated in the said motion are true.

(Signed) C. M. ADAMS.

Sworn to and subscribed before me, this the 17th. day of October, 1905.

(Signed) ROBERT A. ANTHONY,
Special Commissioner.

Which said original subpœna *duces tecum* and original motion to quash are herewith filed.

That immediately thereafter the following proceedings were had touching said subpœna and motion and the testimony of said witness C. M. Adams, to-wit:

Counsel for Respondent Waters Pierce Oil Company expressly waived the objection set up by it in said motion to quash said subpœna "that said subpœna was issued without order of the Court, or the Commissioner."

Upon the request of the Attorney General, representing the Informant, that C. M. Adams be required to testify, it was ruled by the Commissioner that he should be sworn as a witness.

62 C. M. ADAMS, being produced and duly sworn, on his oath, testified for the state as follows:

Direct examination by Mr. HERBERT S. HADLEY:

Q. Your name is Charles M. Adams?
A. Yes, sir.
Q. Where do you live, Mr. Adams?
A. I live at 4427 Morgan street, St. Louis.
Q. How long have you lived in St. Louis?
A. Twenty-seven or twenty-eight years. I cannot recall now. Twenty-eight years, I think.
Q. You came here in 1877 or 1878?
A. In 1877, December, 1877.
Q. What business are you engaged in?
A. I am in the oil business.

Q. How long have you been engaged in the oil business?
A. About twenty-eight years.
Q. Twenty-eight years?
A. Yes, sir, about that.
Q. Were you in the oil business prior to coming to St. Louis?
A. I was.
Q. What company were you connected with?
A. I was connected with the Standard Oil Company.
Q. Where did you then live?
A. St. Paul, Minn.
Q. When you came to St. Louis did you become connected or take up the oil business here?
A. I did.
Q. What company did you become connected with when you came here?
A. Same company.
Q. Standard Oil Company?
A. Yes, sir.
Q. Under what name?
A. Under the name of the Standard Oil Company.
Q. Here in the City of St. Louis?
A. Yes, sir.
Q. What business did you transact for the Standard Oil Company here in the City of St. Louis?
A. Well, I kept the books and attended to the office work.
Q. Did the Standard Oil Company at that time have a place of business here?
A. Yes, sir.
Q. How long did they continue to have a place of business here?
A. Four or five months after I came here.
Q. What business did you go into when you left the Standard Oil Company here and when it discontinued its business?
A. I went into the Waters-Pierce Oil Company.
Q. When the Standard Oil Company had its place of business here what was your official title?
A. I had no title at that time.
Q. Were you manager here at this place?
A. No, sir.
Q. Who was manager here then?
A. A man by the name of William H. Cobb.
Q. What was your work, Mr. Adams?
A. I kept the books and run the office. I might say that I expected to be manager when I came, but Cobb did not resign; as it was expected he would; so I took a subordinate position.

63 Q. Was the Standard Oil Company then selling oil here in St. Louis?
A. Yes, sir.
Q. When did it cease to do business here, if it did cease?
A. I think it was the first of May, 1878.
Q. It appears from the certificate furnished me by the Secretary of State that the Waters-Pierce Oil Company was Organized on the

7th of May, 1878. Did you become connected with that company at the time of its organization?

A. Yes, sir.

Q. Did the Standard Oil Company then quit business here, on the first of May, 1878?

A. I believe they did; yes, sir, or about that time.

Q. Have they to your knowledge done business under the name of the Standard Oil Company here since that time?

Mr. HAGERMAN: Your question is a little indefinite. "Here" might mean the whole state.

Mr. HADLEY: In St. Louis I mean.

A. I don't quite understand your question. Whether they have done business in their name as a local organization?

Q. Yes, sir?

A. I think not, no sir.

Q. Have they done it through any company that has been owned by them?

A. No, sir.

Q. Why did you qualify your answer, Mr. Adams?

A. I didn't know but what you meant some Standard Oil Company located in some other place.

Q. Since the first of May, or the 7th of May, 1878, when you went with the Waters-Pierce Oil Company, have you been actively connected with the oil business since that time?

A. I have.

Q. Well, since you went from the Standard Oil Company to the Waters-Pierce, in May, 1878, to your knowledge has the Standard Oil Company sold oil in the City of St. Louis?

Mr. PRIEST: You mean retail or wholesale?

Mr. HADLEY: Retail, I mean; the general trade.

A. Has the Standard Oil Company sold? They have, certainly.

Q. Where?

A. They have sold to our company.

Q. The Waters-Pierce Oil Company?

A. Yes, sir.

Q. Have they sold oil in retail to the general trade here in this community to your knowledge since 1878?

A. I think they have; but I can't just at the moment name parties to whom they have sold.

64 Q. Have they maintained any place of business here since they ceased in May, 1878?

A. Not to my knowledge.

Q. They have had no tank stations here since that time?

A. I think not.

Q. Have run no tank wagons here upon the streets of St. Louis?

A. Not to my knowledge.

Q. What portion of the oil that is sold to the trade by the Waters-Pierce Oil Company has it purchased from the Standard Oil Company?

A. Well, I couldn't tell the percentage of it.

Q. Well, practically all?

A. Well, I should say the largest part of the purchases have been from them.

Q. And where do they get it from now?

A. Get it from Whiting, Indiana; Franklin, Pennsylvania; Beaumont, Texas; Port Arthur, Texas; Neodesha, Kansas—a great many places.

Q. Get it from Sugar Creek?

A. Sugar Creek, Missouri.

Q. The Waters-Pierce Oil Company gets its oil from Sugar Creek and these other places you have mentioned?

A. Yes, sir.

Q. Get it in Union Tank Line cars?

A. Yes, sir.

Q. Have you any connection with the selling department of the Waters-Pierce Oil Company?

A. No, sir.

Q. Do you know what portion of the State of Missouri the Waters-Pierce Oil Company has sold oil in?

A. No, sir.

Q. You do not know as to that?

A. No, sir.

Q. What position did you hold with the Waters-Pierce Oil Company in 1878?

A. I was elected secretary of the company at that time.

Q. How long did you remain secretary?

A. One year.

Q. What office did you take then?

A. Treasurer.

Q. How long did you continue as treasurer?

A. Two years.

Q. What did you then become?

A. Secretary and treasurer after that for several years. I do not remember now just how long.

Q. What office did you then hold?

A. Then I was treasurer for several years.

65 Q. How long did you continue as treasurer?

A. Well, I can't tell how many years it was.

Q. But you have been secretary or treasurer or both of the Waters-Pierce Oil Company since its organization, about the first of May, 1878, have you not?

A. Yes, sir.

Q. Are you familiar with the fact that in 1882 the capital stock of the Waters-Pierce Oil Company was increased from $100,000.00 to $400,000.00?

A. I am.

Q. Have you recently seen a certified copy of the certificate showing that increase of stock filed in the office of the Secretary of State?

A. Well, I saw a document yesterday. I don't know whether

it was certified or not. I didn't read the certificate or certification of the document.

Q. Do you remember of signing the paper that secured that increase of capital stock?

A. I don't remember; no, sir.

Q. Do you remember as to whether the trustees of the Standard Oil Company appeared as the owner of a considerable portion of the stock of the Waters-Pierce Oil Company at that time?

Mr. PRIEST: We object to that. The instrument itself is the best evidence.

Mr. HADLEY: That paper is in evidence, and I ask him, independent of the paper, whether he remembers, preliminary to asking him other questions.

COMMISSIONER: If he remembers the fact, independent of the paper, he can answer. The paper speaks for itself.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Do you remember that fact?

A. No, sir, I do not.

Q. Do you remember signing such paper?

A. I do not.

Q. Then you wish to be understood by the Commissioner and the court as saying you have no independent knowledge, outside of the paper, of the ownership of stock at that time?

A. I have no recollection of that matter of signing this document.

66 Q. Have you any recollection as to who owned the stock of the Waters-Pierce Oil Company at the time it was increased to $400,000.00?

A. No, sir, I have not.

Q. Do you know now who owned the stock of the Waters-Pierce Oil Company at the time it was increased to $400,000.00?

A. No, sir, I do not.

Q. Do you know whether the trustees of the Standard Oil Company owned a portion of the stock at that time?

A. I do not.

Q. Do you wish to say that you do not remember?

A. I do not remember, no, sir.

Q. On the 29th of May, 1900, there was a reincorporation of this company accomplished, was there not?

A. I believe there was.

Q. And the corporation organized on the 7th of May, 1878, then went out of business, did it?

A. Yes, sir.

Q. Did the new company continue to use the same offices and operate the same properties as the former company had done?

A. I believe they did to a great extent.

Q. Well, did they do business under the same name?

A. Yes, sir.

Q. Sell in the same territory?
A. As far as I know.
Q. Have practically the same employés?
A. I think there was a change in the officers, but the subordinates and employés were practically the same.
Q. Was it in effect, Mr. Adams, a continuation of the same business——

Mr. PRIEST: We object——

Mr. HADLEY:

Q. So far as the business was concerned?

Mr. PRIEST: We object to that. That is calling for an expression of opinion of the witness. He has stated the facts.
COMMISSIONER: I believe I will permit Mr. Adams to answer that question. You may answer the question, Mr. Adams.

A. As far as I know it was.

Mr. HADLEY:

Q. Did they sell the same brands of oil so far as you know?
A. I don't know of any change in the brands.
Q. Did they get their oil from the same source?
A. I believe they did.
67 Q. When did you become treasurer of the new incorporation?
A. When it was organized.
Q. How long did you continue as treasurer?
A. Up to the present time.
Q. Were you secretary of the new incorporation which was effected May 29th, 1900?
A. No, sir, I was not.
Q. Who has been secretary since the new incorporation?
A. I think Mr. Gruet was elected the first secretary of the company.
Q. How long did he continue as secretary?
A. He resigned last winter. I don't know just the date.
Q. Well, he resigned in the summer of 1904, Mr. Adams, to refresh your recollection?
A. I think not. I think it was later.
Q. Who succeeded him?
A. I was elected secretary at the annual meeting in February.
Q. Nineteen hundred and four?
A. Nineteen hundred and five, I think.
Q. Are you now secretary and treasurer?
A. Yes, sir.
Q. But from May 29th, 1900, up until the annual election in February, 1905, you were only treasurer?
A. I was assistant secretary for a period—I don't recall now the date that I was elected—until the annual meeting in February, when I was elected secretary.

Q. Were you also re-elected treasurer?

A. Yes, sir.

Q. So since February of this year you have been both secretary and treasurer?

A. Yes, sir.

Q. And prior to that time you were treasurer and assistant secretary?

A. For a short period, a few months. I have forgotten now when it was. September, 1904, perhaps—I don't recall the date—that I was elected assistant secretary.

Q. Did Mr. Gruet cease to be connected with the company at that time?

A. No, sir. He was secretary and I was assistant secretary for a period of perhaps six months before he resigned from the company.

Q. Going back for a moment to the reincorporation on May 29th, 1900, I will ask you to look at these two papers that I show you, and state if you have seen them before, or copies of those papers? (Handing witness papers marked Exhibit S and Exhibit T heretofore introduced in evidence and copied in this record.)

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A. (Witness examines papers.) I have no recollection of seeing them. I presume I did, but I couldn't say now. I couldn't swear to it.

Q. Do you remember of those circulars being sent out to all the agents and representatives of the company?

A. I didn't mail them. I don't know whether they were or not.

Q. You remember that there were such circulars issued?

A. There was some announcement of the change in the company made.

Q. Similar to that?

A. I presume so.

Q. In substance the same as that?

A. I don't think I ever saw one of them. It is not addressed to me and I don't know that I ever saw those papers.

Q. Mr. Adams, when the Standard Oil Company — doing business here prior to May, 1878, did it have its tank station here?

A. It did.

Q. Did it have tank wagons that sold oil to the trade in St. Louis?

A. No, sir. That was before the days of tank wagons.

Q. Did you sell oil to the general trade here in St. Louis?

A. Yes, sir.

Q. Did you sell oil outside of St. Louis?

A. To some extent, yes, sir.

Q. Did you sell oil in Springfield?

A. I don't recall that we did.

Q. Did you sell oil South of the Missouri River, the territory South of the Missouri River, and West and East of Springfield?

Mr. EDDY: I would like to ask the Attorney General if he is referring to the Standard Oil Company?

Mr. HADLEY: Yes, sir.

Mr. EDDY: I object to all this testimony along this line unless

it is shown that it is the defendant in this case, the Standard Oil Company that is the defendant in this case.

COMMISSIONER: Are you asking about the Standard Oil Company?

Mr. HADLEY: Yes, sir.

Mr. JOHNSON: It is in evidence that the Standard Oil Company of Indiana was incorporated years afterwards.

Mr. HADLEY:

Q. In what state was the Standard Oil Company incorporated, if you know, that was doing business here prior to May 1st, 1878?

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A. I think it was simply a branch of the Standard Oil Company of Ohio.

Q. To refresh your recollection, was it the Standard Oil Company of Kentucky?

A. No, sir.

Q. Are you certain as to what state it was incorporated in?

A. No, sir, I am not.

Q. Who was the president of that company at that time?

A. I don't know.

Q. What was that?

A. I don't know.

Q. Was Horace A. Hutchins connected with that Standard Oil Company for which you were doing business here then?

A. He was.

Q. Was W. P. Thompson connected with that Standard Oil Company for which you were doing business here at that time?

A. Not to my knowledge.

Q. He was afterwards connected with the Standard Oil Company, was he?

A. I think he was.

Q. Was he in 1882?

A. I don't know. I don't know what year he became connected with the Standard Oil Company.

Q. But he was connected with them for some considerable period, was he not?

A. Yes, sir, he was at a later date.

Q. What position did H. A. Hutchins hold in the Standard Oil Company that you were selling oil for here at that time?

A. He was in charge of the sales department.

Q. Do you know what business Col. William P. Thompson was in in 1878?

A. To the best of my recollection he was Vice President of the Camden Consolidated Oil Company.

Q. What was the connection of that with the Standard Oil Company?

A. I don't know. They were located at Parkersburg, West Virginia.

Q. Were they supplying oil to the Standard Oil Company at that time?

A. I don't know.

Q. Do you know whether it was owned by the Standard Oil Company at that time?

A. I do not.

Q. Do you know who the original incorporators of the Waters-Pierce Oil Company were in Missouri in 1878, the original stockholders?

A. I think Mr. Waters, Mr. Pierce, Mr. Hutchins, Col.
70 Thompson and Mr. Carley, as far as I can recall now. That was a good while ago.

Q. To your knowledge had Mr. Thompson or Mr. Hutchins at that time ever been here to the City of St. Louis?

A. They had been, yes sir.

Q. While you were running the Standard Oil Company here?

A. Yes, sir.

Q. Did they come here at the time the Waters-Pierce Oil Company was organized?

A. They were here previous to that, yes, sir.

Q. Was Col. Thompson here in connection with the business that you were conducting?

A. Not that I know of.

Q. What was the purpose of his visit, did you know?

A. I don't know.

Q. Was he here in connection with the oil business?

A. I never met him until that time.

Q. Until the time of the incorporation?

A. Yes, sir.

Q. And never saw him in St. Louis until the Waters-Pierce Oil Company was organized?

A. I never saw Col. Thompson until that time.

Q. You knew Mr. Hutchins before that time?

A. Yes, sir, I knew him very well.

Q. Who was Mr. Frank D. Carley?

A. He was one of the firm of Chess-Carley & Company of Louisville, Kentucky.

Q. Was that a company in the oil business?

A. They were in the oil business and other business besides. As I understood it, they were engaged largely in the cooperage business.

Q. Was Mr. Carley at that time connected with the Standard Oil Company?

A. Not that I know of.

Q. Had he ever been here to your knowledge prior to the organization of the Waters-Pierce Oil Company?

A. I don't recollect of ever meeting Mr. Carley before that time.

Q. Had you ever seen Mr. Horace A. Hutchins here in St. Louis prior to the time of the organization of the Waters-Pierce Oil Company?

A. Yes, sir.

Q. Had he come here in reference to the conduct of the Standard Oil Company's business by you and Mr. Cobb?

A. Yes, sir.

71 Q. Is Horace A. Hutchins still living?

A. I couldn't say.

Q. When did you last see him?

A. I think about a year ago. He was here at the Fair and called on me.

Q. Is he still in the oil business?

A. I don't know.

Q. He has had an office for a number of years at 26 Broadway, has he not?

A. I don't know where his office is.

Q. Haven't you seen him at 26 Broadway?

A. I haven't for a good many years.

Q. He did have an office there in connection with the Standard Oil Company?

A. He did at one time, yes, sir.

Q. What was his position with the Standard Oil Company at that time?

A. I couldn't say positively. It is only hearsay anything that I know about him in that connection.

Q. That is the only way you can know about a man's business, from his statements?

A. He made no statements to me.

Q. What office did he occupy?

A. I don't know.

Q. What sign was on the door?

A. I don't know. I don't know as he had any sign on the door.

Q. He was an official of the Standard Oil Company, though, was he?

A. I don't know.

Q. Well, he appeared to be, did he?

Mr. JOHNSON: That has gone far enough, we submit, if the Commissioner please.

Mr. HADLEY: The witness is a reluctant witness.

WITNESS: Mr. Hadley, I don't think I have been a reluctant witness.

Mr. HADLEY:

Q. What sign was on the door and what business did he transact as the representative of the Standard Oil Company at 26 Broadway?

A. I don't think I was in his office. I saw him there. As I recollect now I saw him at the lunch table.

Q. At 26 Broadway?

A. Yes, sir.

Q. That was a lunch for the officers and representatives of the Standard Oil Company in that building?

A. Yes, sir.

72 Q. Being an officer of the Waters-Pierce Oil Company you, of course, have had occasion to know the directors, have you, Mr. Adams, throughout its history?

Mr. PRIEST: I object to the form of the question as assuming a fact not testified to by the witness.

COMMISSIONER: I think that question is proper.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question.

A. I don't know who the directors are of the Standard Oil Company.

Q. Between 1878 and up to and after 1882 do you know whether Col. W. P. Thompson was both a director of the Waters-Pierce Oil Company and also a director of the Standard Oil Company?

A. I do not.

Q. You don't know whether he was or was not?

A. No, sir.

Q. Do you know George H. Vilas?

A. Well, I used to know him. I don't know as I would know him now if I would see him.

Q. What business was he connected with in 1882?

A. I don't know.

Q. Was he connected with the Standard Oil Company?

A. I don't know.

Q. Did you know him at that time?

A. I knew him by sight long before that.

Q. Where had you known him and seen him?

A. I had seen him in Cleveland.

Q. In connection with the oil business?

A. No, sir, he was an accountant for a large wholesale grocery house.

Q. Did he afterwards, Mr. Adams, become connected with the Standard Oil Company?

A. I had heard that he did become connected with them.

Q. In 1882, when the capital stock of the Waters-Pierce Oil Company was increased to $400,000.00, George H. Vilas appears, according to the articles of agreement filed, one of the three trustees representing three hundred and ninety-eight shares. At that time was he not connected with the Standard Oil Company?

Mr. PRIEST: I object to the preamble of the question.

Mr. HADLEY: That is a statement from a document that is in evidence. I state to him this fact.

73 COMMISSIONER: I understood the question stated it appeared from that.

Mr. PRIEST: In the previous question he asked him whether he knew that Vilas was connected with the Standard Oil Company and he said he had heard so. I do not see any relation from the preamble unless it is to draw an inference.

Mr. HADLEY: It is to fix a date.

COMMISSIONER: I think a portion of that is not necessary to be incorporated in the question.

To which action and ruling of the Commissioner the state then and there duly excepted at the time and still excepts.

Mr. HADLEY: Do you remember the time when this increase of capital stock was accomplished?

A. I don't recollect the date, except that you have given it there as sometime in 1882. I could not have remembered when it was.

Q. At that time did you see Mr. George H. Vilas here in St. Louis?

A. Not to my recollection.

Q. At that time was George H. Vilas connected with the Standard Oil Company?

A. I don't know.

Q. When was it that you understood that he was connected with the Standard Oil Company?

Mr. PRIEST: He did not say he understood it. He said he had heard.

Mr. HADLEY: That is an understanding.

COMMISSIONER: He may answer the question.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

A. At the time he left this wholesale grocery house.

Mr. HADLEY:

Q. About when was that?

A. McGorden, McMillan & Company.

Q. I say when was that?

A. I couldn't tell you the year. Probably it was in 1875 or 1876.

Q. After that your understanding was that he was connected with the Standard Oil Company?

Mr. JOHNSON: He said he had heard so.

A. I heard that he had left this firm. I just happen to think there was some other concern he was connected with after leaving McGorden, McMillan & Company before I heard he went to the Standard Oil Company.

74 Q. In 1882, at the time of this increase of capital stock, did you not understand then that he was connected with the Standard Oil Company?

Mr. JOHNSON: We object to any understanding on the part of the witness. That does not prove any specific fact.

Mr. HADLEY: It is preliminary, if the Court please.

Mr. JOHNSON: We object to the question whether it is preliminary or otherwise.

COMMISSIONER: I think the real question is what Mr. Adams knows about it.

To which action and ruling of the Commissioner the state then and there duly excepted at the time and still excepts.

Mr. HADLEY:

Q. Can't you fix the date, Mr. Adams?

A. No, sir, I can't.

Q. Well, was it about that time that you understood he was connected with the Standard Oil Company?

Mr. PRIEST: Why press him when he says he don't remember the time?

Mr. HADLEY:

Q. Was it about that time?

A. It was several years before that that I heard he had gone with the Standard Oil Company.

Q. Who is M. R. Keith?

A. He was an attorney living in Cleveland, Ohio.

Q. In 1882 was he one of the attorneys of the Standard Oil Company?

A. I heard so.

Q. In 1882 was George F. Chester connected with the Standard Oil Company?

A. I don't know.

Q. On the increase of capital stock of the Waters-Pierce Oil Company to $400,000.00 George H. Vilas, M. R. Keith and George F. Chester appear as trustees representing three hundred and ninety-eight shares according to this certificate. Do you know who they were trustees for?

A. No, sir.

Q. Who was John M. McGuffin?

A. I don't know.

Q. Did you know him?

A. No, sir.

Q. In the increase of capital stock to $400,000.00 H. A. Hutchins appears to have been elected as a director of the company again. At that time, in 1882, was he still connected with the Standard Oil Company?

A. I don't know.

Q. Do you know of his ceasing to be connected with it?

A. I don't know anything about it.

75 Q. So far as you know did he continue to be connected with it from the time that you came out here up until the present time?

Mr. PRIEST: I object to the question. The witness has answered that he doesn't know.

Mr. HADLEY: The witness' mind seems to be largely a case of "I don't know" in these matters.

COMMISSIONER: He has stated that he didn't know about it.

To which action and ruling of the Commissioner the state then and there duly excepted at the time and still excepts.

Mr. HADLEY:

Q. In that increase of capital stock the trustees of the Standard

Oil Trust appear as owning twelve hundred shares of stock. Do you know who represented the trustees of the Standard Oil Trust in the meetings of the stockholders of the company?

A. No, sir.

Q. You were secretary, were you not, Mr. Adams?

A. I don't remember whether I was or not.

Q. You were at least connected with the company?

A. I was connected with the company a good many years.

Q. Did you ever represent those shares of stock owned by the trustees of the Standard Oil Company at any of the meetings of the stockholders?

Mr. JOHNSON: We submit that that authority, whatever it might have been, was in writing, and the writing is the better evidence of the fact, and the witness cannot testify as to the contents of the paper.

COMMISSIONER: I think he can testify whether he represented them at any time.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. PRIEST: How represented?

COMMISSIONER: I don't know how. That has not been shown.

Mr. HADLEY:

Q. Did you ever, Mr. Adams?

Mr. JOHNSON: By power of attorney or proxy or how?

Mr. HADLEY:

Q. In any way did you ever?

A. I have no recollection of doing so.

Q. From the time that the trustees of the Standard Oil Trust and Horace A. Hutchins and W. P. Thompson and Carley and
76 Chester were owners of stock in the Waters-Pierce Oil Company, did those individuals or did the trustees of the Standard Oil Trust appear personally at the meetings of the Waters-Pierce Oil Company?

A. I can't tell you.

Q. Name any person who represented them at any meeting of the stockholders of the Waters-Pierce Oil Company?

A. I have no recollection of it.

Q. Is your recollection faulty in any way, Mr. Adams?

Mr. JOHNSON: We object to that. The witness has said he don't know, and he is your own witness. His answers do not justify any such questions.

Mr. PRIEST: Here is a matter of twenty years ago involving a series of facts that were not of themselves important.

COMMISSIONER: I don't think that question is hardly material.

Mr. HADLEY:

Q. Prior to the reincorporation of the company in 1900, Mr. Adams, did you ever have occasion to make out the checks for the payment of stock dividends?

Mr. PRIEST: We object to that as entirely immaterial.

Mr. HADLEY: It would go to his knowledge of the stockholders.

COMMISSIONER: Objections overruled.

To which action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question, Mr. Adams.

Mr. JOHNSON: That is a preliminary question to be answered yes or no.

A. What date did you mention?

Mr. HADLEY:

Q. Prior to the 29th of May, 1900?

A. Why, I suppose I did as treasurer of the company, but I don't recall any particular incident.

Q. Prior to May 29th, 1900, did you know who the stockholders of the Waters-Pierce Oil Company were?

Mr. JOHNSON: We object to that as being irrelevant, incompetent and immaterial, and I would like to ask the witness a preliminary question in support of our objection.

COMMISSIONER: You may do so.

Mr. JOHNSON:

77 Q. Mr. Adams, whatever knowledge you may have with respect to who were members of the board of directors you derived wholly from entries in the record books of the company, did you not?

Mr. HADLEY: I object to that question as leading and suggestive to their own witness.

Mr. JOHNSON: He is your own witness.

Mr. HADLEY: He is the representative of one of the defendants here.

COMMISSIONER: He may answer the question.

To which action and ruling of the Commissioner the state then and there duly excepted at the time and still excepts.

(Question repeated to witness at request of counsel.)

A. Yes, sir.

Mr. JOHNSON:

Q. At that time those record books were in your custody as an officer of the company, were they not?

A. What date do you refer to?

Q. Immediately prior to the organization of the new company, prior to the 29th of May, 1900, that is his question.

Mr. HADLEY: Not immediately, but prior to the 29th of May.
Mr. JOHNSON: Well, prior.

A. I wasn't secretary at that time and the books were not in my possession.

Q. When were you secretary previous to that time?

A. Several years before. I don't recall the dates on which Mr. Gruet was elected secretary.

(The last question asked by Mr. Hadley repeated to witness, at request of counsel, viz.: "Prior to May 29th, 1900, did you know who the stockholders of the Waters-Pierce Oil Company were?")

Mr. PRIEST:

Q. Whatever knowledge you got in relation to that fact was in your official relation as an officer of the Waters-Pierce Oil Company, was it not?

A. When I was secretary of the company I had access to the book pertaining to such matters.

Mr. JOHNSON:

Q. You obtained that information as an officer of the company?

Mr. HADLEY: I think I ought to have the privilege of examining this witness.

COMMISSIONER: Yes, sir. Repeat the question of General Hadley.

Mr. PRIEST:

78 Q. Whatever information you had as to who the stockholders of the Waters-Pierce Oil Company were prior to May 27th, 1900, you obtained in your official capacity and relation with that company?

Mr. HADLEY: We object to that because it is leading and suggestive to their own witness.

COMMISSIONER: I will permit Mr. Adams to answer whether he did or did not obtain the information in that way or through this source.

To which action and ruling of the Commissioner the state then and there duly excepted at the time and still excepts.

A. What information I had at that time was obtained from the records of the company, books of the company.

Mr. HADLEY:

Q. Mr. Adams, let me ask you this question: Were you a stockholder in the Waters-Pierce Oil Company prior to the 29th of May, 1900?

Mr. PRIEST: We object to that because it is one of the questions raised by the application.

COMMISSIONER: Objection overruled. He can answer. I think it is a proper question.

To which action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question, Mr. Adams. Were you a stockholder in the Waters-Pierce Oil Company prior to May 29th, 1900?

A. I was.

Q. When did you become a stockholder?

Mr. PRIEST: We object to that question.

COMMISSIONER: I think the question is proper.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. When did you become a stockholder, Mr. Adams?

Mr. PRIEST: The proposition which we raised and which we agreed to certify was as to the stockholders of this company. There is no charge of any misconduct of any stockholder of the Waters-Pierce Oil Company, and that is not a material issue in this case.

COMMISSIONER: I think it is proper to show his relations to the company, either as a stockholder or as an officer.

To which action and ruling of the Commissioner the re-
79 spondents, and each of them, then and there duly excepted at the time and still except.

Mr. PRIEST: You mean for the purpose of showing he is an interested or disinterested witness?

COMMISSIONER: I am not undertaking to say what the purpose is, but these questions are proper and always permitted. When a man is testifying about a business it is undoubtedly proper to ask him his relation to that business, whatever it was.

Mr. HADLEY: If you will pardon an observation from me at this time with reference to that objection. I don't understand that there has been any agreement, either by this court or myself, to certify to the Supreme Court the question as to whether we can show a reason and a motive and a purpose upon the part of the Standard Oil Company of Indiana and the Waters-Pierce Oil Company of Missouri to divide the State of Missouri between them as trade territory and in that way prevent the possibility of competition between themselves and to use, by each of these companies, a bogus company to crush out competition. I don't understand that your honor needs any assistance of any court to admit evidence which might tend to show a reason and motive why this agreement should be carried out as it has been apparently carried out in Missouri. Now, in support of that proposition, isn't it of the most importance to show that from the very inception of the organization of the Waters-Pierce Oil Company down to the present moment the Standard Oil Company has had its stock ownership and that is why it is that the people of Missouri have been deprived of what they had a right to demand and expect that this creature — which they have

given existence would go out into the state and sell oil in competition with any company that had a right to do business here? Consequently it is important to determine whether Mr. Adams owned stock in his own name or the Standard Oil Company.

COMMISSIONER: I have passed upon the question. I don't think those remarks are necessary right now. Proceed with the examination of the witness.

Mr. HADLEY:

Q. Were you a stockholder in the Waters-Pierce Oil Company prior to May 29th, 1900?

Mr. JOHNSON: That is the old company you refer to?

80 Mr. HADLEY: Yes, sir.

A. I was.

Q. Did you attend the stockholders' meetings?

A. I did.

Q. Did you see who were present there in person and by proxy?

A. Why, I can't recollect. I presume I did.

Q. And did you see the dividend checks that were made payable to the different stockholders?

A. I presume I did. I have no recollection now of any particular one you refer to.

Q. Did you see the stock books of the company prior to that time?

A. I had seen them, but just when I can't tell you, as I was not secretary of the company at that time.

Q. You were treasurer of the company at that time?

A. I was.

Q. Did you have occasion to correspond with the various stockholders of the Waters-Pierce Oil Company prior to May 29th, 1900?

A. I don't recollect of any correspondence with them.

Q. You sent them their stock dividends, didn't you, when you were treasurer and signed the checks?

A. I suppose I did. I have no recollection of it now.

Q. Do you remember who were the stockholders of the Waters-Pierce Oil Company prior to May 29th, 1900?

Mr. JOHNSON: We object to that because it is apparent from the witness' statement that he could only get the information from the records of the company and written documents, etc., and those records, etc., are the best evidence.

Which objection was by the Commissioner overruled, and to the action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time and still except.

A. I do not.

Mr. HADLEY:

Q. Do you mean to say that you don't know who any of the stockholders were or that you don't know who all of them were?

A. I don't know who all of them were.

Q. Did the trustees of the Standard Oil Trust continue to own

their stock that appeared in their names in 1882 down to the time of the dissolution of that trust by the judgment of the Supreme Court of Ohio?

81 Mr. JOHNSON: We object upon the same grounds, because the witness would have to detail the contents of written documents and records.

COMMISSIONER: I don't think so. There is another rule which would permit him to testify if he knows these things. A man who is in an office and familiar with the office, and even a man who has examined a set of books, may testify as to general results which these books show. I think, if he knows and obtained that information as an officer of the company, he may answer the question.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. JOHNSON: This refers to the old company and not the present company, and hence the question does not come within the one raised by the motion to vacate or quash the subpœna duces tecum.

WITNESS:

A. Repeat the question.

Mr. HADLEY:

Q. Whether the trustees of the Standard Oil Trust continued to own their stock in this company?

A. I don't know.

Q. Do you know of their disposing of it?

A. I have no recollection of it.

Q. Do you know the fact that the trustees of the Standard Oil Trust were put out of business by a judgment of the Supreme Court of Ohio?

Mr. PRIEST: I object to that as entirely immaterial.

Mr. HADLEY: I wish to inquire if he knows who held that stock or what became of it after that time.

Mr. PRIEST: That is entirely improper. He can fix the date, but he can't incorporate that judgment in this question.

Mr. HADLEY:

Q. Do you remember the date, Mr. Adams?

A. I do not.

Q. It was along about 1892?

COMMISSIONER: You may ask him about the circumstances.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

82 Mr. HADLEY:

Q. Do you remember the fact?

A. No, sir, I do not.

Q. Do you know about the fact that there was some liquidating

trustees who held the property and stock of the Standard Oil Trust after its dissolution?

A. I had heard something of that kind.

Q. Was the stock that was held by the trustees of the Standard Oil Trust in the Waters-Pierce Oil Company afterwards held by the liquidating trustees of that company?

Mr. JOHNSON: If he has knowledge of it.

Mr. HADLEY: He couldn't testify to it unless he has knowledge of it.

COMMISSIONER: He can answer if he knows or not.

A. I do not.

Mr. HADLEY:

Q. You don't know whether the liquidating trustees of the Standard Oil Trust held the stock that was held by the trustees or not?

A. No, sir.

Q. Do you know who did hold them?

A. No, sir.

Q. Do you know how much stock in the Waters-Pierce Oil Company H. Clay Pierce owned prior to May 29th, 1900?

Mr. PRIEST: We object to the question.

COMMISSIONER: I think the question is proper.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. PRIEST: I submit that we are going into a matter which has been certified to the Supreme Court of the state.

COMMISSIONER: If the witness refuses to answer the question, it will be certified. The Court has got to have something to answer.

Mr. PRIEST: I suggest that the witness decline to answer the question on the ground that it is immaterial and raises an issue not involved in this case, and it is an inquiry which cannot be prosecuted against this witness as an officer of the Waters-Pierce Oil Company, in which capacity he gained whatever information he secured upon that subject; that the witness has testified that he is a stockholder of the company; that this proceeding is one which seeks to forfeit not only the interest of the company but every stockholder in the
83 company, and he is entitled on that ground to be protected from answering the question.

COMMISSIONER: Now do I understand, Judge Priest, that Mr. Adams claims this to be a privileged question?

Mr. PRIEST: Yes, sir, and for the additional reasons involved in the motion filed to-day of the Waters-Pierce Oil Company to quash the subpœna duces tecum.

Mr. HADLEY: I have heard no objection made by the witness to answering this question.

COMMISSIONER: I understand that, but the record may show it.

Mr. HADLEY: The question does not relate to his stock ownership, but to the ownership of H. Clay Pierce, and he certainly cannot claim a privilege of H. Clay Pierce or the Waters-Pierce Oil Co.

COMMISSIONER: In my judgment the question is proper and the witness should answer it.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Do you make any objection to answering that question, Mr. Adams?

Mr. PRIEST: I submit that it is not proper.

COMMISSIONER: I will permit the record to show that he does make an objection. Let the record show that the witness objects to answering the question for the reasons above stated.

Mr. HADLEY: I don't know of any practice that permits a lawyer to claim any constitutional privilege for a witness.

Mr. HAGERMAN: I don't see why a lawyer could not answer for the witness.

Mr. HADLEY: I don't understand what reasons Judge Priest wants to interpose.

COMMISSIONER: He has stated his reasons and got them in the record. Well, you might ask Mr. Adams. Do you decline to answer the questions for the reasons stated, Mr. Adams?

A. What was the question?

Mr. HADLEY:

Q. The question was, how much stock did H. Clay Pierce own in the Waters-Pierce Oil Company prior to May 29th, 1900?

84 A. I don't decline to answer that question. I simply say I don't know how much he did own.

Mr. HADLEY: Now we have obviated the whole difficulty.

Q. Do you know who the present stockholders of the present Waters-Pierce Oil Company are?

Mr. JOHNSON: That is objected to on the same grounds, if the Court please, the same grounds as stated by Judge Priest, and for the same reasons we advise the witness to decline to answer that question.

COMMISSIONER: My ruling is that it is a proper question and the witness may decline upon the advice of his counsel to answer, if he chooses to do so.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question, Mr. Adams?
A. I don't know who they are.
Q. Then you don't decline to answer the question?
A. I have answered it.
Q. You don't decline to answer it?

A. I have answered it.

Q. Do you know a man by the name of M. Van Buren?

A. I have heard of a man of a similar name to that.

Q. Isn't it a fact, Mr. Adams, that at the present time the Standard Oil Company owns, holds or controls, either by itself or through a person for it, approximately two-thirds of the stock of the Waters-Pierce Oil Company?

Mr. PRIEST: Objected to for the reasons last above stated.

COMMISSIONER: I don't think the objection is well taken.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. JOHNSON: We advise the witness not to answer on the ground stated.

Mr. HADLEY:

Q. What is the answer, Mr. Adams?

A. I decline to answer.

Q. Why do you decline to answer?

Mr. JOHNSON: We object to that as entirely unnecessary, in view of his previous answer.

85 COMMISSIONER: I will let counsel state the reason, if they desire to do so.

Mr. PRIEST: I have stated the reasons heretofore.

Mr. HADLEY: I have not heard any formal statement of the objections.

COMMISSIONER: There has been quite a lot of objections given.

Mr. HADLEY: In reference to this last question I don't know what the reasons are why this witness should not answer this question.

Q. Do you make out the dividend checks of the Waters-Pierce Oil Company at the present time?

Mr. JOHNSON: We object to that question, if the Court please, on the grounds last stated.

COMMISSIONER: I think the question is proper.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. JOHNSON: We advise the witness not to answer.

Mr. HADLEY:

Q. Do you decline to answer, Mr. Adams?

A. Yes, sir, I do.

Q. For what reasons?

A. For the reasons already stated.

Q. Do you know it to be a fact, Mr. Adams, that a dividend check is sent monthly, or as often as declared, to H. Clay Pierce, representing the dividend upon approximately three thousand nine hundred and ninety-six shares of stock of the Waters-Pierce Oil Company and

that two-thirds of that amount is regularly turned over by Mr. Pierce to Mr. Tilford, or some other representative of the Standard Oil Company at 26 Broadway?

Mr. PRIEST: I object to the question in the form it is in. It is complex and compound.

COMMISSIONER: The objection will be overruled.

To which action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question, Mr. Adams?

Mr. PRIEST: I object to it on the further ground that it is totally immaterial to this issue; that whatever information the witness had he had as an executive officer of the Waters-Pierce Oil Com-
86 pany, for whose acts he was responsible as an executive officer; whatever punishment might be inflicted upon it by reason of these proceedings would be chargeable to him personally, as well as to it; that the testimony is totally immaterial under the issues in this case; that there is no charge in the bill of any misconduct on the part of the stockholders of the Waters-Pierce Oil Company, and the amount of dividends received by them, or any one of them, is totally immaterial; he is called upon to testify to facts which if material, as contended by the state in this case, would impose upon him as a stockholder of the Waters-Pierce Oil Company a forfeiture and inflict upon him personally a punishment or form a chain in the link of testimony tending in that direction.

Which objection was by the Commissioner overruled, and to the action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. JOHNSON: We advise the witness, under the circumstances, not to answer the question.

Mr. HADLEY:

Q. Do you decline to answer, Mr. Adams?

A. I decline to answer.

Q. For the reasons given by Judge Priest?

A. Yes, sir.

Q. You were subpœnaed to bring the stock book of the Waters-Pierce Oil Company here with you, were you not?

A. I think that was mentioned.

Q. Have you complied with that subpœna?

A. I have not brought it, no, sir.

Q. Are you willing to do so?

Mr. PRIEST: I submit that he has no power to do so, and he has made his return in writing, and a motion to quash has been made by the Waters-Pierce Oil Company in writing, and sworn to by him, and the witness adopted that statement in that motion to quash as sworn to by him, and he has been advised by counsel of the Waters-

Pierce Oil Company that he cannot produce rightfully and that he declines to produce, in consequence of that advice, the books and papers specified in the subpœna.

COMMISSIONER: The proper course is for the witness to
87 be interrogated as to his custody of the documents, and if he has not produced them, to give his reasons why.

To which action and ruling of the Commissioner the respondents and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY: I assume that in my question.

Mr. PRIEST: The paper which he has sworn to states the fact of his custody.

COMMISSIONER: I don't understand that *that* paper filed here, at least I doubt very much whether that would constitute an answer for the witness himself. He is now on the stand and sworn and he must answer these preliminary questions, whether or not he brought the book, whether or not it is in his custody, and if he did not bring it, why he did not bring it.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. The stock book of the Waters-Pierce Oil Company is in your custody, isn't it, Mr. Adams?

A. It is in a safe in our office.

Q. You have charge of it as secretary of the company, have you not, and access to it?

A. I have access to it and others have access to it, other officers of the company.

Q. You are secretary of the company and as secretary have charge of the stock book of the company, do you not?

Mr. JOHNSON: Isn't that a question of law, General?

COMMISSIONER: The only question is whether he has access to it and could get it and produce it here. I will permit the question.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time and still except.

Mr. HADLEY:

Q. Answer the question. Have you got the custody of the stock book of the Waters-Pierce Oil Company?

A. I can't say that it is wholly in my custody.

Q. Could you get it in your custody and bring it here in response to this subpœna if there were no legal objections raised by the Waters-Pierce Oil Company to your doing so?

A. I would not consider that I had any right to take that book out of the safe and bring it here without authority.

88 Q. From whom?

A. From a superior officer.

Q. Even if a court should order you to bring it here?

A. I have no jurisdiction over that book. It is not in my custody to that extent that I could take it out of the office.

Q. Well, it is in your care, is it not, and in your office as secretary?

A. It is in the safe in the office.

Q. And the laws of this state provide, do they not, to your knowledge, that the secretary of the corporation shall have charge of the stock book of the corporation?

A. I don't know about the legal aspect of the matter.

Mr. PRIEST: We object to the question.

COMMISSIONER: Objection sustained.

To which action of the Commissioner in sustaining said objection the state then and there duly excepted at the time and still excepts.

Mr. HADLEY:

Q. Have you brought that stock book here?

A. I have not.

Q. Are you willing to produce it here?

A. Not unless counsel advise me to do so.

Q. Why have you not brought it here?

Mr. PRIEST: I submit that the witness has answered that question.

COMMISSIONER:

Q. Mr. Adams, you may state whether or not that was the reason you did not bring that book?

A. Under advice of counsel I was told that it would not be necessary to bring it here.

Mr. HADLEY:

Q. Is that the only reason why you have not brought it?

A. Yes, sir.

Cross-examination by Mr. J. D. JOHNSON:

Q. I, as one of the attorneys of the Waters-Pierce Oil Company, advised you not to produce that book here, for the reasons previously stated by Judge Priest, isn't that a fact, Mr. Adams?

A. Yes, sir.

It is agreed by and between the parties hereto that this witness may be recalled for further cross-examination at the next hearing of this case.

Witness excused.

89 Upon the suggestion of counsel for respondents, which suggestion was concurred in by counsel for informant, and considering the fact that there is now pending before this court a motion filed by the informant by which an order is sought to compel respondents to produce before this commissioner certain witnesses and certain documents and papers, and that said motion involves similar questions to those raised by the above questions propounded to witness Adams, answers to which were refused by

him, for the reasons there stated, the foregoing questions propounded to witness Adams, together with his reasons for refusing to answer same, and his failure to produce the stock book above referred to, are hereby certified to this Honorable Court with the request that the commissioner be directed by the court as to whether or not the reasons given by said witness Adams for declining to answer said questions and to produce said stock book, are sufficient, and whether or not the witness should be compelled to answer said questions and to produce said stock book in evidence.

Respectfully submitted,

ROBERT A. ANTHONY,
Special Commissioner.

And on the date last aforesaid, there was filed in the office of the Clerk of the Supreme Court the following petition:

In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

STATE OF MISSOURI ex Informatione, HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

99 *Petition for Production of Books, Papers and Documents.*

To the Honorable Robert A. Anthony, Commissioner in the above entitled cause:

Comes now the State of Missouri by Herbert S. Hadley, its Attorney General, and shows to the Court that testimony has been introduced in the above entitled cause to the effect that the Waters-Pierce Oil Company and the Standard Oil Company, respondents herein, have divided up the State of Missouri as trade territory, in a certain part of which the Waters-Pierce Oil Company sells oil, in which part the Standard Oil Company does not and will not sell oil, and in the other part of which the Standard Oil Company sells oil, in which part the Waters-Pierce Oil Company does not and will not sell oil. That orders received by the Waters-Pierce Oil Company for oil from customers in the Standard Oil Company's territory are sent by said Waters-Pierce Oil Company to the Standard Oil Company to be filled, and orders received by the Standard Oil Company for oil from customers in the Waters-Pierce Oil Company's territory are sent by the Standard Oil Company to the Waters-Pierce Oil Company to be filled, and that a record is made by said Waters-Pierce Oil Company and said Standard Oil Company of orders thus transmitted.

Wherefore, the State of Missouri by Herbert S. Hadley, its Attorney General, prays the Court to make an order requiring the said respondent, the Waters-Pierce Oil Company to produce any books,

papers and documents now in its possession showing the transmission of such order from the Waters-Pierce Oil Company to the Standard Oil Company, or in connection therewith, for the reason that said books, papers and documents are necessary for a proper understanding by said Commissioner and the Supreme Court of Missouri of the issues of fact in this case.

HERBERT S. HADLEY,
Attorney General.

Herbert S. Hadley being by me first duly sworn says the facts stated in the above petition are true.

91 HERBERT S. HADLEY.

Subscribed and sworn to before me at the City of St. Louis, Missouri, this 29th day, of June, 1905.

ROBERT A. ANTHONY, *Commissioner.*

In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Petition for Production of Books and Papers.

To the Honorable Robert A. Anthony, Commissioner in the above entitled cause:

Comes now the State of Missouri by Herbert S. Hadley, its Attorney General, and shows to the Court that the testimony heretofore heard by the Commissioner in this case shows that the Waters-Pierce Oil Company, respondent herein, makes regular reports, as to the amount of oil that it sells in the State of Missouri to a certain party or parties at 26 Broadway in the City of New York, in which said place is maintained an office of the Standard Oil Company, respondent herein, and the Republic Oil Company, respondent herein. That the production of the books, papers and documents now in possession of said respondents, showing the fact of the making of said reports and the contents thereof, is necessary for a proper understanding of the issues in this case.

Wherefore, the State of Missouri by Herbert S. Hadley, Attorney General, prays the Court to make an order requiring said Re-
92 spondent, Waters-Pierce Oil Company, to produce said books, papers and documents that show the fact that said reports are made to certain parties at 26 Broadway in the City of New York, and the contents thereof.

HERBERT S. HADLEY,
Attorney General.

Herbert S. Hadley, being by me first duly sworn says that the facts stated in the above and foregoing petition are true.

HERBERT S. HADLEY.

Subscribed and sworn to before me at the City of St. Louis, Missouri, this 29th day of June, 1905.

ROBERT A. ANTHONY, *Commissioner.*

In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Petition for Production of Books, Papers and Documents.

To the Honorable Robert A. Anthony, Commissioner in the above entitled cause:

Comes now the State of Missouri by Herbert S. Hadley, its Attorney General, and shows to the court that the testimony already heard by said Commissioner in this case shows that the State of Missouri is divided by said respondents as trade territory, and in one part of the State the said Waters-Pierce Oil Company sells oil, in which part the Standard Oil Company does not and will not sell oil, and in the other part the Standard Oil Company sells oil, in which part the Waters-Pierce Oil Company does not and will not sell oil. That said division of trade territory in the State of Mis-
93 souri was arranged between said Waters-Pierce Oil Company and said Standard Oil Company, or between the Waters-Pierce Oil Company, a corporation organized and existing under and by virtue of the laws of this state prior to May 29, 1900, and the Consolidated Tank Line Company, which said Consolidated Tank Line Company was purchased by the Standard Oil Company which succeeded to all its rights, privileges and liabilities, including the rights and privileges of said Consolidated Tank Line Company by virtue of any agreement between said Waters-Pierce Oil Company and said Consolidated Tank Line Company for the division of the State of Missouri as trade territory between said companies; and which said Waters-Pierce Oil Company, incorporated prior to May, 1900, was succeeded by the Waters-Pierce Oil Company respondent herein, which said respondent succeeded to all the rights, privileges and liabilities of said Waters Pierce Oil Company incorporated prior to May 29, 1900, including the rights of said Waters-Pierce Oil Company under and by virtue of said contract between it and the Consolidated Tank Line Company.

Wherefore, the State of Missouri by Herbert S. Hadley, its Attorney General prays the Court to make an order that said respondents shall produce such books, papers and documents as it may have

in its possession relating to or connected with any contract or agreement made by said respondent, the Waters-Pierce Oil Company, with the Consolidated Tank Line Company, or the Standard Oil Company in the division of trade territory in the State of Missouri, for the reason that said books, papers and documents are necessary for a proper understanding by the Honorable Commissioner of the Supreme Court of Missouri of the issues in this case.

HERBERT S. HADLEY,
Attorney General.

Herbert S. Hadley being by me first duly sworn, says the facts stated in the above and foregoing petition are true.

HERBERT S. HADLEY.

Subscribed and sworn to before me at the City of St. Louis, Missouri, this 29th day of June, 1905.

ROBERT A. ANTHONY,
Commissioner.

94 In the Supreme Court of Missouri, Court en Banc, April Term, 1905.

No. 21988.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Return to Order to Show Cause Upon Informant's Petition for the Production of Books and Papers.

The respondent, the Waters-Pierce Oil Company, for return to the order herein entered by the Commissioner to produce books and papers, respectfully submits that the said rule should be discharged and vacated for the reason that

I.

It is an invasion of the constitutional guarantees of Section 11 Article 2, Constitution of Missouri, and Article 4 of amendments to the United States Constitution against unreasonable searches and seizures.

II.

It undertakes to compel said respondent to produce evidence against itself in quasi criminal prosecution, or a case in which a penalty is sought to be recovered against it, and in violation of Section 23, Article 2, Constitution of Missouri, and Article 5 of amendments to the United States Constitution

III.

It seeks to deprive said respondent of its liberty and property without due process of law, and denies to it the equal protection of the law, contrary to the provisions of Section 30, Article 2, Constitution of Missouri, and Section 1, Article 14 of amendments to the United States Constitution.

IV.

The order is not sufficiently definite and specific in the
95 description of the books and papers ordered to be produced to authorize the making of the same.

H. S. PRIEST,
NAGEL & KIRBY,
JOHN D. JOHNSON,
Attorneys for Respondent Waters-Pierce Oil Company.

In the Supreme Court, October Term, 1905.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

To the Honorable Supreme Court of Missouri:

Comes now Robert A. Anthony, Special Commissioner appointed by the Supreme Court of Missouri in the above entitled cause, and shows to the Court that on June 29th, 1905, at the City of St. Louis, Missouri, the Informant, by Herbert S. Hadley, Attorney General of Missouri, filed with the said Commissioner three petitions asking for orders requiring in two of said petitions that the Respondent Waters Pierce Oil Company produce in evidence certain papers and documents, and in one petition that the Respondents produce in evidence certain papers and documents, all of which said petitions are herewith filed and exhibited to the Court.

That on the day said petitions were filed the Commissioner made three several alternative orders requiring the production of the papers and documents in said petitions described before the Commissioner at Kansas City, Missouri, on July 11th, 1905, or show cause why said papers and documents should not be produced, which orders were entered on the Commissioner's records and were as follows:

"The petition of the Attorney General, hereinbefore set
96 out, filed with the Commissioner, for a rule upon the respondents to produce the books, documents and papers therein mentioned, and, the same having been considered by the Commissioner,

It is, therefore, ordered that the respondent, the Waters-Pierce Oil Company, be and it is hereby required to produce said papers, books and documents before the Commissioner at Kansas City on

the eleventh day of July, 1905, or show cause against the said petition why the same should not be produced."

That on July 11th, 1905, at Kansas City, Missouri, the Respondent, Waters-Pierce Oil Company, filed its return to said orders for production of books and papers, which return, embodying suggestions as to why such books and papers should not be produced, is herewith filed and exhibited to the Court.

Therefore, upon suggestion of the Commissioner, which suggestion was fully concurred in by counsel for both the Informant and the Respondents, and in view of the fact that there is now pending before the Court an original petition and motion for the production before the Commissioner of certain witnesses, as well as certain documentary evidence, books and papers, involving similar questions to those raised by the return and suggestions of the Waters-Pierce Oil Company, herewith filed, these motions, orders and return thereto, are hereby certified to the Supreme Court of Missouri, with the request that the Court determine whether or not the return filed by the Waters Pierce Oil Company is a sufficient compliance with the above orders made on the petitions hereto attached, and whether or not said orders should be made permanent, or that the Respondent, Waters Pierce Oil Company, or any of the Respondents, can be compelled to produce before the Commissioner as evidence any of the books, papers or documents mentioned in said petitions.

97 Respectfully submitted.

ROBERT A. ANTHONY,
Special Commissioner.

October 19th, 1905.

And afterwards, to-wit, on the 23rd day of January, 1906, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resp.

Comes now the said informant and files his motion as to briefs herein. Which said motion is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court en Banc., October Term, 1905.

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Motion.

Now comes the State of Missouri, by Herbert S. Hadley, Attorney General, and moves the Court to make an order that the briefs

hereto attached, which were filed in behalf of the State of Missouri and the respondents herein in the matter of the application of the State of Missouri on the information of Herbert S. Hadley, Attorney general, to obtain the testimony of Henry H. Rogers in the above entitled cause which said application is now pending
98 before the New York Supreme Court, in the County of New York, be considered by this court for the reason that the questions briefed and argued bear directly upon the questions to be decided by this Court in the decision of the questions now pending before it.

HERBERT S. HADLEY,
Attorney General.

Suggestions in Support of said Motion.

This motion asking that the briefs filed by the Attorney General and by the attorneys for the respondents herein in the Supreme Court of New York in the matter of the application of the State of Missouri by Herbert S. Hadley, Attorney General, to obtain the testimony of Henry H. Rogers, be considered is made for the reason that the questions discussed in said briefs were imperfectly presented to this Court in the briefs heretofore filed by the Attorney General and counsel for the respondents. This came about in the following way and for the following reasons:

This case was referred by this Court to Robert A. Anthony to hear the evidence, pass upon objections to the testimony, and after the evidence had been heard to submit his finding on the law and the facts to this Court. Early in the taking of the testimony, the State offered evidence tending to show that a controlling interest in the stocks of the three respondents was owned, held or controlled by the same person or persons, and such testimony was objected to by the respondents on the ground that the same was immaterial.

It was contended by the State that such testimony was very material, as it tended to show the form and manner in which the combination, confederation, agreement and conspiracy existing among the respondents had been accomplished, and also tended to show their mutuality of interests and the motive or common purpose that they would have to so conduct their business in the State of Missouri as to do the acts alleged in the information to have been done by them in violation of the anti-trust laws of this State. The Commissioner overruled the objections to these questions, holding that the same were material. Particularly did this question come before
99 Commissioner Anthony for decision at the City of St. Louis upon the 17th of October, at which time and place testimony was offered showing that Mr. H. C. Pierce, who held all but four shares of the stock of the Waters-Pierce Oil Company in his name, turned over two-thirds of the amount received by him as monthly dividends upon this stock to H. M. Tilford at 26 Broadway, who was connected with the Standard Oil Company of Indiana, and also with the Standard Oil Company of New Jersey, which lat'er com-

pany it was contended by the State was the "holding" company of the stock of the three respondents. This testimony was vigorously objected to by counsel for the respondents, but such objections were again overruled, the Commissioner stating that the same was material and relevant, and adding by way of answer to the arguments of the attorneys for the respondents, that it was not necessary for the Attorney General to have plead in his information the evidence he expected to introduce. On the same day, questions of a similar nature were asked of the witness C. M. Adams, Secretary of the Waters-Pierce Oil Company, and the same objections were made by the attorneys for the respondents, which objections were overruled by the Commissioner, and the witness Adams either answered such questions or expressed his inability to do so on account of lack of knowledge. However, to a few of such questions he refused to give an answer, offering through his counsel, as a reason for the refusal, his personal privilege under Section 23, Article II of the Constitution of the State of Missouri.

In view of the fact that a construction of this clause of the Missouri Constitution, as applicable to this case, was then pending before the Supreme Court by reason of a motion filed by the Attorneys of the Republic Oil Company to set aside an order made upon September 23rd by his Honor James D. Fox, requiring the presence of the officers of the Republic Oil Company before the Commissioner for the purpose of giving testimony, and in view of the fact that the same question had been raised by the attorneys for the Waters-Pierce Oil Company in their motion to quash the *subpoena duces tecum* which had been served upon Mr. Adams requiring him to produce the stock book of the Waters-Pierce Oil Company, the
100 Commissioner did not require the witness Adams to answer such questions on the claiming of his personal privilege, but certified the questions, together with his refusal to answer the same, to this Court for decision. This certification was made by the Commissioner for the reason, as stated in the certification, that similar questions were pending before this Court as raised by the motion of the attorneys for the Republic Oil Company to set aside the order of the Honorable James D. Fox heretofore referred to. In the three briefs filed by the attorneys for the respondents in this Court at the time the case was argued upon October 31st, no *con*jection was made that the questions asked of the witness Adams were immaterial. In the opening argument of Mr. Hagerman, who appears as the leading counsel for the respondents in this litigation, no mention was made of the contention that the questions asked Mr. Adams were immaterial under the issues made by the pleadings in this case, nor was any contention made that the commissioner had certified the questions to this Court for decision. The Attorney General in his argument made no reference to this question for the reason above stated. Mr. H. S. Priest, in the closing words of his argument said that in addition to the other reasons offered by the respondents as to why the witness Adams should not be compelled to answer the questions asked him, it was also contended that the inquiry was

immaterial. It was not, however, contended by Judge Priest that this question had been certified to this Court for decision.

Some two or three weeks after the oral argument in this Court, there was a reply brief filed by some of the attorneys for the respondents, in which the contention was advanced for the first time that the Commissioner had certified to this Court the question as to whether evidence tending to show a common ownership of a controlling interest in the stock of these three companies was material. In answer to the contention thus advanced, a brief was filed in behalf of the State in which it was contended, first, that such a question had not been certified by Commissioner Anthony to this Court for decision; and, second, that such evidence was plainly material to the issues made by the pleadings, for the reasons therein stated.

101 Between the oral argument of this case and the filing of this reply brief by the attorneys for the respondents in this Court, a notice had been served upon the respondents that depositions would be taken in the City of New York. The purpose of the taking of such depositions was made known to the attorneys for the respondents immediately following the refusal of the witness Adams to answer the questions asked him on account of his constitutional privilege. When the taking of testimony was begun in the City of New York upon the 5th day of January, the officers and directors of the respondent companies summoned refused to answer questions tending to show that the stock of these three companies was owned, held or controlled by the same person or persons, and that while each company had a separate and different board of directors, the business of the three companies was in reality controlled and directed from what was known as the Standard Oil Building, located at 26 Broadway, and that representatives of all three of the respondents had offices in such building and received directions as to the conduct of the business of the respondents from certain trade committees with officers at the same place. On such refusal, application was made to the Supreme Court of New York that these witnesses be required to answer the questions asked or be adjudged guilty of contempt. In response to such an order to show cause, it was contended by the attorneys of the respondents, and the attorneys of said witnesses, first, that the questions asked were immaterial; second, that the materiality of such testimony was pending for decision in the Supreme Court of Missouri; and, third, that the circumstances under which the testimony was being taken had been the cause of sensational newspaper reports. These questions were argued before the Supreme Court of New York upon the 13th of January, at the conclusion of which argument the Court stated that in his opinion the questions asked were clearly material as tending to show the mutuality of interest between the three respondents, and that he would require the witnesses to answer such questions unless he found, from an examination of the record upon which the questions now pending before this Court were submitted, that the question of materiality of the same or similar questions was now pending before this Court for decision.

102 It was contended on behalf of the State that the question of the materiality of such evidence was not pending before this Court for decision, for the following reasons:

First. That such a question had not been certified to this Court by Commissioner Anthony.

Second. That an objection to a question asked a witness on the ground of its immateriality can be made only by a party to the cause and is not a legal reason for the witness to refuse to answer the question.

Third. That the Supreme Court of Missouri had referred this case to Robert A. Anthony for the express purpose of hearing all the evidence and passing on objections to testimony offered by the parties. That, it, therefore, would not be fair to this Court to ask it to pass upon the materiality of the question with only the testimony of one witness before it.

The authorities and arguments in support and in opposition to this contention are set forth in the briefs filed in behalf of the State and the briefs filed by the attorneys for the respondent before the Supreme Court of New York.

As these questions were not argued at the oral hearing, and so far as the State was concerned were hastily and imperfectly briefed, it was believed that the additional arguments and authorities contained in the briefs filed in the Supreme Court of New York might be of some assistance to this Court in the decision of the questions presented to it.

The contention now made on behalf of the State that the question of materiality of evidence tending to show a common ownership of a controlling interest in the stock of these three companies is not before this Court for decision, is not advanced for the reason that counsel for the State hesitate to meet or to have this Court determine that question. The Judges, namely, Judge Anthony, to whom this case was referred, and Judge Gildersleeve who heard extended oral arguments largely directed to this question alone, did not hesitate in deciding that such evidence was material. The reason why this position is taken is because Judge Anthony, to whom this
103 case was referred has ruled that such evidence is material; he has not asked this Court to review his ruling in this regard; the witness Adams had no right to interpose the objection of the immateriality of such testimony as a reason for his refusal to answer the question, and it would be unfair to this Court to ask it to decide this question without the benefit of oral argument thereon by opposing counsel and with only the testimony of one witness before it. If the failure of the Court to pass upon the materialty of this testimony in this case, counsel for the state would join with counsel for the respondents in a request to the court to pass upon the question, but in view of the fact that both Judge Anthony and Judge Gildersleeve have ruled that such evidence is material, it is not clear how any such embarrassment or delay would result from the refusal of this court to undertake to pass upon this question.

Respectfu'ly submitted.

HERBERT S. HADLEY,
Attorney General.

And afterwards, to-wit, on the 26th day of February, 1906, the following proceedings were had in said cause, viz:

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY and WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Corporations, Respondents.

Quo Warranto.

Now at this day, come again the parties aforesaid, by their respective attorneys, and the court here having fully considered and understood the motion heretofore filed by said respondents, to set aside the order made, and notice signed by the Honorable James D. Fox, a Judge of this Court, on September 28, 1905, notifying said respondents to produce before the Special Commissioner herein, certain witnesses and documents, doth consider and adjudge that said motion be, and the same is hereby overruled. And the
104 Court here having fully considered and understood the record and questions heretofore certified to this court by Robert A. Anthony, Special Commissioner herein, doth consider and adjudge that instructions by said commissioner be, and the same are hereby denied; and that the matters certified by said Commissioner, are re-certified to him that he may proceed therewith under the broad and flexible power given him by his order of appointment. (Opinion filed.)

Which said opinion is in words and figures as follows, to-wit:

105 In the Supreme Court of Missouri, in Banc, October Term, 1905.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Original proceeding on information in the nature of *quo warranto*.—The Waters-Pierce Oil Co. is a domestic corporation. The Standard Oil Co. of Indiana is a corporation of that State. The Republic Oil Co. is a corporation of the State of New York. The two latter companies are domiciled for business purposes in Missouri by virtue of licenses issues to them under our statute, and upon compliance therewith. Each and every of these corporations was created for the purpose of engaging in the business of refining petroleum and buying and selling the products thereof and all are engaged in the business of selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in Missouri; not only so, but the said Standard Oil Co. has established, owns and

is conducting a refinery in this State and is refining petroleum thereat.

On the 25th of March, 1905, the Attorney General commenced an original proceeding in this court in the form of an information in the nature of *quo warranto*, filed *ex officio*, against all of said corporations, thereby causing this court to be informed that said corporations had created, entered into and become members of a pool, trust, agreement, confederation, combination and understanding among themselves and each other, to regulate, fix and control the prices to be paid by retail dealers and others in Missouri for naptha, benzine, gasoline, lubricating oil and other products of petroleum sold in this State and to control and limit the trade therein and to control, limit and prevent competition in the buying and selling thereof between themselves and others engaged in like business and to deceive and mislead the public into the belief that said respondents were separate and distinct corporations, each pursuing an independent business as legitimate competitors in
106 the purchase and sale of said products of petroleum. Said information, informing this court, furthermore, that said corporations by said pool, trust, combination, etc., had actually fixed and maintained the *the* price of such products of petroleum so offered for sale by them in this State, and had controlled and limited the trade in such products, and had prevented and destroyed competition therein, and had deceived and misled the public into the belief that said corporations were separate and distinct corporations, each pursuing their independent business as legitimate competitors in a legitimate business, although in truth and in fact they had entered into and were members of such pool, combination, trust, etc., and no real competition existed between them.

The information proceeds with due, legal precision and particularity to inform this court of the scope and tenor of the trust scheme and of the specific methods claimed to have been employed therein and thereby to rivet upon the people of this State, contrary to public policy and in the very teeth of express law, an alleged odious, monopoly. For present purposes the inventory of details pleaded need not be set forth in this opinion. Suffice it to say that the substance and pith of the agreed plan and method, as gathered from the formal averments of the information are, speaking figuratively and by way of comparison, that, as all Gaul was divided into three parts, (see the opening sentence of Cæsar's Commentaries), and as the Roman world was parceled out in thirds in a certain historic domestic partition between Anthony, Octavius and Lepidus presently after Cæsar's death, so the State of Missouri has been divided into three parts by said corporations for the purposes of illegal exploitation and tribute—one part, chiefly north of the Missouri river, being assigned to the Standard Oil Co.; another part, chiefly south of said river, being assigned to the Waters-Pierce Oil Co.; and the other parts (varying from time to time in dimension and location as the alleged needs and whims of said trust may direct and point) being assigned to the Republic Oil Co.—the novel and startling role

played by the latter corporation, under the scheme outlined
107 by informant and said by him to exist, being to act as a sort of wandering Ishmaelite, so to speak, with a name but no fixed local habitation, armed by the alleged trust with a roving commission to range up and down and to and fro only in such trade territory in Missouri as may have dealers in and consumers of such sundry products of petroleum, who refuse for any cause to deal with the Standard Oil Co. or the Waters-Pierce Oil Co. in their said respective tributary divisions of the State, and where competition perchance may have lifted its head, and there and then beat down the price of oils until such competition is smitten hip and thigh, as it were, and crushed out, whereby and wherefrom such recalcitrant dealers and consumers become mellow and subservient to and are made to pass under the yoke of the said general plan of the trust exploitation. Moreover, this court is caused to be informed that the Standard Oil Co. by said trust agreement has agreed to sell and sells said products of petroleum only to the Waters-Pierce Oil Co. and Republic Oil Co. and through itself, and the Waters-Pierce Oil Co. and Republic Oil Co. have agreed to buy and do buy said products of petroleum only from the Standard Oil Co. That by virtue of said agreement and the working plan adopted to effectuate its purposes, said corporations have monopolized 85 to 90% of the current market supply of the said products of petroleum in Missouri and control the price thereof, and have secured the control of the oil business for the purchase and sale of oils in this State to the injury and damage of its people.

The object of this information is to oust the said corporations and each of them from their franchises, rights, authority, license and certificate to do business under the laws of this State and to forfeit the same.

On the filing of said information, straightway a rule was passed and handed down to show cause and to which said rule respondent corporations severally made answer and return. Respondents, the Standard Oil Co. and the Republic Oil Co., made return by the same counsel and in common form (*mutatis, mutandis*) admitting
their incorporation, charter, purpose and license and author-
108 ity to do business in the State of Missouri as pleaded in the information. The Standard Oil Co. also admitted that it had established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum and averred that it had spent many thousand dollars in the construction thereof. The said respondents further admit that they were doing business in the State of Missouri as venders of the products of petroleum as set forth in the information, but they generally, as well as specifically at length, deny, *seriatim*, the averments in the information having the sting of charging any illegal agreement, confederation and combination and the alleged plan and method of effectuating the same, etc. The Waters-Pierce Oil Co. admitted its incorporation and business as a dealer in oil, as averred in the information, but denied all averments thereof charging the formation of a trust or any violation of law.

Thereafter, on May 3rd, 1905, this court made and entered the following order:

"Now on this day, it appearing to the court from the pleadings in the above entitled cause that issues of fact are joined therein, therefore, upon motion and request of Herbert S. Hadley, Attorney General, that a special commissioner be appointed by the court to take the testimony upon the issues joined in said cause, it is ordered by the court that Robert A. Anthony, Esq., of Fredericktown, Mo., be and he is hereby appointed special commissioner to take the testimoney upon the issues joined in said cause, with full power and authority to issue subpœnas, compelling the attendance of witnesses, the production of papers, books and other documents, to issue attachments therefor and to hear and determine all objections to testimony and to admit or exclude the same in the same manner and to the same extent as this court might in the trial of the case before the court, and to report the testimony, with his findings of fact thereon, to this court with convenient speed, provided that such report shall be filed by the first day of the October Term, 1905, unless further continued for good cause; exceptions to the findings of fact so made by said special commissioner to be filed by
109 either party so desiring within ten days after the filing of the commissioner's report and findings."

Thereafter, the said Robert A. Anthony qualified as such commissioner and took upon himself the burden of doing and performing the matters and things nominated in his said warrant and chart of authority, and, prior to the report of testimony taken, rulings made and conclusion of fact arrived at by him, the Attorney General filed with the clerk of this court the following application:

"Now comes Herbert S. Hadley, Attorney General of the State of Missouri, who prosecutes this case for and in behalf of the State, and informs the court that C. L. Nichols, of 26 Broadway, New York City, is the president of the Republic Oil Company, respondent herein, and that W. T. McKee, of Cleveland, Ohio, is the secretary and treasurer of said respondent; that the said C. L. Nichols and W. R. McKee are non-residents of the State of Missouri, and are without the jurisdiction of the court in which said cause is pending; that they are valuable, material and important witnesses for informant in said cause, and have in their possession certain books and documents which are material and necessary evidence on the part of the informant; that the testimony of said C. L. Nichols and W. T. McKee could and would give in this cause is, in substance and to the effect as follows:

That the firm of Schofield, Schurmer & Teagle was, prior to July, 1901, a co-partnership, engaged in the business of refining petroleum and buying and selling the products thereof in various parts of the United States, and particularly in the State of Missouri, and that for long years prior to June, 1901, said firm of Schofield, Schurmer & Teagle were active and actual competitors in the State of Missouri of the Standard Oil Company of Indiana and the Waters-Pierce Oil Company, respondents herein; that during the month of June, 1901, the property and business of said firm of Schofield,

Schurmer & Teagle was purchased by the Standard Oil Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, and that said corporation owned at that time the stock of the Standard Oil Company of Indiana, re-
110 spondent herein, and owned and controlled a majority of the stock of the Waters-Pierce Oil Company, a respondent herein; that after the purchase of the property and business of said firm of Schofield, Schurmer & Teagle by the Standard Oil Company of New Jersey, as aforesaid, there was organized in the State of New York a certain corporation, known as the Republic Oil Company, and that the stockholders who appeared in the articles of association as the owners of the stock of said Republic Oil Company were Geo. B. Wilson, F. A. Turrell and James R. Turner; that each and all of said stockholders of said Republic Oil Company were employés of the Standard Oil Company of New Jersey, and of other corporations connected with the oil business, whose stock was owned by the Standard Oil Company of New Jersey, and that all of said stockholders were employed as clerks in a building located at 26 Broadway in New York City, which said building is known as the Standard Oil Building, and in which said building the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana, The Republic Oil Company and the Waters-Pierce Oil Company have and maintain offices, agents and representatives. That said Geo. B. Wilson, F. A. Turrell and James R. Turner, who appeared as stockholders of said Republic Oil Company, did not own the stock of said company, said stockholders being mere clerks at a small salary in the employ of the Standard Oil Company of New Jersey, and subsidiary Companies as aforesaid, but that said stock of said Republic Oil Company was and is now owned and controlled by the Standard Oil Company of New Jersey, the purchaser of the property and business of Schofield, Schurmer & Teagle, as aforesaid. That the object and purpose of transferring the property and business of the firm of Schofield, Schurmer & Teagle to the Republic Oil Company, and the object and purpose of incorporating the Republic Oil Company with the stockholders, as aforesaid, was in order that said Republic Oil Company might continue to carry on and conduct the business of Schofield, Schurmer & Teagle in various States of the United States, and particularly in the State of Missouri, as an independent and competing company in said State of the
111 Standard Oil Company of Indiana and the Waters-Pierce Oil Company, and thus present to the public an appearance that it, said Republic Oil Company, was pursuing an independent business as a legitimate competitor of said Standard Oil Company of Indiana and the Waters-Pierce Oil Company. That said purpose and object in the organization of said Republic Oil Company, and the transfer to it of the property and business of the firm of Schofield, Schurmer & Teagle has been carried out by said Republic Oil Company under the management, direction and control of said witnesses. That said Republic Oil Company does not compete for the business of said Standard Oil Company of Indiana and Waters-

Pierce Oil Company in the State of Missouri, although said Republic Oil Company does pretend and claim to the public to be a competitor of said respondents. That said Republic Oil Company buys and receives the oil that it sells to the public from the Standard Oil Company of Indiana, and from no other person or corporation, and that the principal purpose and object accomplished by the business of said Republic Oil Company is to sell oil in the State of Missouri, in the territory assigned therein to the Waters-Pierce Oil Company, lying for the most part south of the Missouri river, as alleged in the information in this case, to such trade as will not, on account of prejudice or other reasons, buy of the Waters-Pierce Oil Company, and to crush out competitors of said Waters-Pierce Oil Company by temporarily reducing the price of oil to the purchasing public. That the same purpose and object and method of doing business is carried on and practiced by said Republic Oil Company in a certain territory in the State of Missouri, lying for the most part, north of the Missouri river, which is assigned to the Standard Oil Company of Indiana, as alleged in the information in this case.

Informant further states that said C. L. Nichols and W. T. McKee are competent witnesses to testify to the facts herein set forth, which testimony informant is informed and believes, and therefore states to the court, that such witnesses can and will give, if they testify as witnesses in this cause.

Your informant further states that said W. T. McKee has
112 in his possession certain books, papers and documents, to-wit: the stock book of the Republic Oil Company, which said stock book will disclose the fact that said stock is owned and controlled by the Standard Oil Company of New Jersey.

Wherefore, and by reason of the competent, material and important evidence possessed by said C. L. Nichols and W. T. McKee, informant states that he desires the appearance and attendance of said C. L. Nichols and W. T. McKee, and to take the testimony of said Nichols and McKee, and to introduce in evidence the said stock book of the Republic Oil Company in the court room of the St. Louis Court of Appeals, before the Hon. Robert A. Anthony, commissioner, appointed by the court to take the testimony in said cause, in the City of St. Louis, on the 18th day of October, 1905, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of said day, and if not completed thereon, to be continued from day to day until the same is completed.

Informant states he knows of no witness or witnesses in the State of Missouri by whom he could prove the facts to which said witnesses could testify as fully as the same could be proven by the testimony of said witnesses, and informant believes that the testimony which said witnesses could and would give, as herein set forth, is true.

Informant further states that he is ready and willing and hereby offers to deposit in court an amount of money sufficient to pay the necessary traveling expenses of said witnesses from their place of residence to St. Louis and return for the purpose of giving said testimony.

Wherefore, said Herbert S. Hadley, Attorney General, as aforesaid, requests and prays the Honorable James D. Fox, one of the judges of the Supreme Court of Missouri, to issue a notice in writing, directed to Messrs. Frank Hagerman and A. D. Eddy, attorneys for respondents, the Republic Oil Company and the Standard Oil Company, and that a like notice, in writing, be issued to Charles Nagel, John D. Johnson and H. S. Priest, attorneys for the Waters-Pierce Oil Company, that the testimony of said C. L. Nichols and
113 W. T. McKee is desired in said cause, and requiring the said Frank Hagerman and A. D. Eddy, attorney of record of said Republic Oil Company, to have said C. L. Nichols and W. T. McKee, president and secretary, respectively, of the aforesaid respondent, the Republic Oil Company, at the place, on the day and at the time above set out, then and there to testify in said cause, and to require the said W. T. McKee to produce at said time the stock book of said Republic Oil Company."

Thereafter, the following notifying order was made in the premises by Fox, J. in vacation:

"To Messrs. Frank Hagerman and A. D. Eddy, attorneys of record for the Republic Oil Company, and the Standard Oil Company of Indiana, and Messrs. Charles Nagel, John D. Johnson and H. S. Priest, attorneys for the Waters-Pierce Oil Company:

You, and each of you, are hereby notified that Herbert S. Hadley, Attorney-General of the State of Missouri, informant in this cause, has filed with me, one of the judges of the Supreme Court of Missouri, in vacation, a petition, in writing, setting forth the names of certain persons whose testimony he desires to take in the above entitled cause, as well as certain books and documents which he desires to introduce in evidence, together with the time and place therefor fixed at the court room of the St. Louis Court of Appeals, in the City of St. Louis, on the 18th day of October, 1905, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon, and if not completed thereon, to be continued from day to day until the same is completed. That in said petition the Attorney general states that he desires the testimony of C. L. Nichols, at 26 Broadway, New York City, and W. T. McKee, of Cleveland, Ohio, who are, respectively, president and secretary and treasurer of the Republic Oil Company; that said persons are non-residents of the State of Missouri, in which said cause is pending; that they are valuable and material witnesses for informant, as is more particularly set forth in said application; that said McKee has in his possession the stock book of said Republic Oil Company, which will be competent and material evidence in said cause, as is more particularly
114 set forth in said application.

Now, therefore, in accordance with the provisions of section 8983, Revised Statutes, 1899, these presents are to command you, the said Frank Hagerman and A. D. Eddy, and you are hereby required to produce the said C. L. Nichols and W. T. McKee and have them at the place and on the time hereinbefore set out, then and there to answer such competent, legal and material questions as

may be put to them touching their knowledge of the issues in the above entitled cause and you are further required and commanded to have the said W. T. McKee produce and present in evidence at said time and place mentioned the stock book of the said Republic Oil Company. A copy of the petition, filed by informant, is hereto attached, of which you will take due notice.

Given under my hand this 28th day of September, A. D., 1905.

JAMES D. FOX,
Judge of the Supreme Court of Missouri."

Thereafter, at this term, the following motion was filed in this court by Messrs. Hagerman and Eddy, directed to said order and notice:

"Now comes Frank Hagerman and A. D. Eddy, who are counsel of record for the respondents, the Republic Oil Company and Standard Oil Company, of Indiana, in the above entitled cause, and move the court to set aside the order made and notice signed by James D. Fox, a judge of this court, on September 28, 1905, in response to the petition of the Attorney-General, requiring them to produce before R. L. Anthony, commissioner herein, C. L. Nichols and W. T. McKee at the time and place set out in said order and notice, and to produce the document demanded by informant, as specified therein, for the following reasons:

First. Said order was improperly and improvidently granted.

Second. Because they, and each of them, bear no relation to either of said respondents other than that of attorneys and client herein, and such relation does not impose upon them the duty of having the witnesses named, or the book specified in said order and
115 notice before the commissioner at the time named or at any other time. Alfred D. Eddy is an attorney at law residing in Chicago, Illinois, and having no business in this State other than as an attorney in this cause, while Frank Hagerman is an attorney at Kansas City, Missouri, having no connection with the said respondents except as attorney and client in this case.

Third. Because said attorneys of record of the said Standard Oil Company of Indiana and of the Republic Oil Company have no power, authority or jurisdiction over the said C. L. Nichols and W. T. McKee, or either of them, to compel the attendance of either of said witnesses named at the place named in said notice and order, or elsewhere, to testify before said commissioner.

Fourth. Because the document named in said order and notice is not and has never been in the possession or under the control of either said Eddy or Hagerman, or are they, or either of them, required by said notice to attend before the commissioner as witnesses. This proceeding is based and founded upon article III, chapter 143, of the revised statutes of Missouri, 1899, which does not contemplate an order to produce by the court, or other officer authorized to take evidence, upon any other person than an officer, director, agent or employé of the Republic Oil Company, which order can only be made upon such witness whose attendance has been procured to testify before the tribunal authorized to take the evidence.

Fifth. Because it was and is beyond the power of this court to require of these attorneys the duties of serving process for the purpose of procuring the attendance of informant's witnesses in the cause, thus taking the time, labor and expenditure of the attorneys to procure witnesses on behalf of the State, without any compensation being made therefor, and compelling the attorneys to perform duties antagonistic to the interests of their client, and the production of evidence against their client and in favor of their adversary.

Sixth. Because the statute under which said application is made does not apply to proceedings by information in the nature
116 of *quo warranto*, but applies solely to actions commenced by the Attorney-General or some prosecuting attorney by the direction of the Attorney-General, in equity, in the circuit court of this State, and does not confer power, authority or jurisdiction upon the court to order the production of witnesses, or books and papers before the commissioner.

Seventh. Because said statute under which said application is made is in contravention and violation of sections 11 and 23 of article II, of the Constitution of Missouri.

Eighth. Because the said statute is in contravention and violation of section 53, article IV, of the Constitution of Missouri.

Ninth. Because said statute is in contravention and violation of the fourteenth amendment to the Constitution of the United States, in that it condemns without due process of law, and in that it denies to the defendant the equal protection of the law, and discriminates between resident and non-resident persons and corporations.

Tenth. Because the said statute is an attempt to secure the evidence of witnesses from without this State, by constructive service, and without providing compensation to said witnesses for their time and expenses, and thus deprives them of their property without just compensation, and also deprives the respondent and its attorneys of any compensation for the service and expense of procuring the attendance of such witnesses, books and papers.

Eleventh. Because said statute is an unlawful attempt to extend the process to be issued thereunder beyond the territorial limits of this State.

Twelfth. Because said statute is in contravention, and violation of section 25, article II of the Constitution of Missouri, in that it inflicts cruel and unusual punishment by depriving the respondent of its constitutional right to be heard in its defense of informant's action, for the default, omission or contempt of another over whom said respondent has no power or control to compel attendance.

117 Thirteenth. Because by the laws of the State of New York, under which the respondent, the Republic Oil Company, is organized and incorporated, it is required to keep its stock books in the State of New York, and has no power or authority to bring the same into the State of Missouri, and cannot do so without violating the laws of the State of its creation.

Fourteenth. Because the order was made upon an ex-parte petition of the Attorney-General without any notice to any attorney or any respondent in this cause."

Which said motion was sworn to severally by said attorneys.

Supplementing said motion, another in the same form was filed by Messrs. Johnson, Nagel & Kirby, and Priest, attorneys for Waters-Pierce Oil Company.

The contention bodied forth in these motions were argued orally by learned counsel with entire felicity and are anew presented in briefs taking a wide play in statutory, common and constitutional law. In passing, it may be said that other matters pending before the special commissioner and referred by him to us, certainly by consent of counsel and possibly on their implied request, or tacit suggestion, were also argued at the same time and find place in said briefs and we are invited to deliver a pronouncement upon them. However, it is thought best to separate the consideration of questions arising before the commissioner, and by him certified here, from the consideration of those questions arising on the motions to vacate the order of Fox, J. and, for the present at least, to consider the latter as distinct from all others.

I.

Broadly speaking, the motions strike at the power of this court to lay upon the shoulders of counsel the duties and burdens shadowed forth in that order and to thereby credit them with the result of obedience, on one hand, or charge them with the result of disobedience, on the other. It is true it will be seen that a subsidiary or minor assault is made upon the order upon behalf of respondents, but, nevertheless, the major note, the very gist of the pleading is directed to an insistence personal to counsel and, inasmuch as this is so, we may be permitted to defer to them by adopting their theory that the large question presented is as stated.

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Should the order be vacated? We think not, and this for the following reasons:

(1) It being always permissible to look to the principles of general law for the governing reasons of a given statute, it will prove neither amiss or uninstructive, before coming to a close view of the particular statute involved and presently to be considered, to recall certain hornbook propositions, viz.: the relation of attorney and client is not commonly, if ever, regulated in its distinguishing characteristics and earmarks by express contract. Such relation arises by mere employment and the relation itself, being one of high confidence, delicacy, power and intricacy, its scope, duties, powers and incidents are controlled and fixed by certain principles of general law which must be read into the contract of employment in order to clothe it with due and sensible life and color. For instance, an attorney at law is, forst of all, an officer of the court. As such officer, and not otherwise, he moves and lives and has his being. His very authority to pursue his historic and honorable profession springs from an act of the law and of the court and may be terminated by the same authority, and his duties are circumscribed and prescribed by law. In the due and orderly administration of justice through the courts it is the duty of an attorney at law to assist the court. If *rectus in curia*, he is by the same token *amicus curiæ*. In perform-

ing his duties as an officer of the court and under its eye and direction, such duties within reasonable bounds are not extraordinary or illegal or unnatural ones, but, to the contrary, are ones of honor and responsibility, inherent in the very office of an attorney at law, and are related to due process of law and recognized legal procedure. A trite illustration of the reciprocal duty of the court to command and of an attorney to obey has long been found in our statute and is of every day use. Thus, our Bill of Rights provides, section 22, that in every criminal prosecution the accused shall have the
119 right to appear and defend in person and by counsel. The statute provides, §2560, that, in case of an arraignment under indictment for felony if one be unable to employ counsel, the court shall assign him counsel at his request. Would counsel, so assigned, be at liberty to eschew the assignment or avoid the labor because of whim or caprice or because of an inherent lack of power in the court to place such burden of responsibility and labor upon them? The question answers itself.

Even after employment, a client has no right to control his attorney in the due and ordinary conduct of a suit, but it is the attorney's duty to do what the court would order to be done, though his client instruct him otherwise. 3 Bl. 165 (Sherwood's note) although ordinarily an attorney must obey the lawful instruction of his client. So, too, for certain purposes, for instance in the matter of notice, an attorney, once he is employed in a given civil suit, stands for that turn and to some extent in the shoes of his client. It is in recognition of this theory that our legislature proceeded in enacting the statute permitting a notice of an appeal from a justice court to be served upon an attorney, §4074; in permitting notice for taking depositions to be served upon an attorney, §2885; and in allowing notices, orders and rules made and passed or required in the progress of a civil case to be served upon an attorney of record therein. See code of civil procedure, §586. Also in permitting notice of an application for a change of venue to be given to an attorney, §822; and in permitting notice of suing out a writ of error to be given to an attorney (§852).

Reference might be made to other living cognate enactments for similar provisions to illustrate the point in hand. Such has always been our legislative policy. Take, for example, an illustration from our abandoned statutes, so pertinent as to be on all fours. When a bill of discovery was allowable in accordance with the usages of chancery practice, a litigant desiring a discovery might present a petition to the court or judge in vacation, setting forth the matters upon which his claim to the discovery was founded, the facts
120 sought to be discovered and such interrogatories in relation thereto as he shall think necessary to exhibit in order to attain a full discovery. Thereupon the court or judge in vacation might grant an order requiring the party from whom the discovery was sought to answer the interrogatories exhibited in the petition. This petition and order to answer were required to be filed in the office of the clerk of the court and a copy thereof served on the other party or *his attorney*. R. S. of 1845, pp. 818-9.

Again: the rules of this court, covering the matters of gravity and solicitude to litigants, are constructed on the theory that notice in a given instance may be given to an attorney of record and thereby bind his client and be made to answer all the practical ends of justice.

It is in the light of the foregoing established legal principles and pregnant illustrations of grounded legislative policy that we must approach the consideration of §8983, the same being a part of our anti-trust statutes and being the section under which the application for the order assailed was made and upon which it is based.

(2) Coming to the section in question, it provides that when the Attorney-General has commenced proceedings, such as heretofore indicated, under the laws against the formation and maintenance of pools, trusts of any kind, monoplies in commodities, or combinations or organizations in restraint of trade, etc., and he desires to take the testimony of any officer, director or employé of any corporation, proceeded against, and the individual or individuals whose testimony are desired are without the jurisdiction of the courts of this State, or reside without the State of Missouri, then he shall file in the court where the proceeding is instituted in term time or in vacation, or with any person duly authorized to take the testimony in such case, a statement in writing setting forth the name or names of persons or individuals whose testimony he desires to take, etc. Thereupon the court, or one of the judges thereof, etc., shall issue immediately a notice in writing directed to the attorney or attorneys of record in said cause notifying said
121 attorneys of record that the testimony of the person or persons named in the application is desired, and "requiring" said attorney, to whom said notice is delivered, "to have" said officer, agent, employé or representative at the place named in the application at the time fixed then and there to testify. The section ends significantly as follows: "Provided, also, in addition to the above named time, six days shall be allowed for the attorney of record * * * *to notify the person or persons whose testimony is to be taken* * * *" Some of the language used is inapt and lacking in legal precision—a case of "thundering in the index"—but the whole section, fairly and benignantly construed in the light of the reasoning heretofore employed and in the light of the legislative policy evidenced by said illustrations, shows that it was meant thereby to provide a means of notifying a defendant through his attorney of record. In other words, the legislature, in legal effect, provided that notice to an attorney of record should be notice to a client in the particular in hand. And that, in our opinion, is all it does mean, and if we are right in this, its force is spent on a question of notice. So construed, it is not out of line with the many provisions of our law hereinbefore cited, nor out of line with the underlying theory that an enrolled attorney is an officer of the court and may have duties assigned to him as such officer. If the statute had provided or the court had ordered that one of its attorneys should *vi et armis*, or say, by stratagem, procure the bodily presence of a given person in court at a given time and place, *will ye, nill ye*,

or, if we may be allowed a fanciful speculation, if the court or statute should require one of its attorneys as an officer to perform certain manual labor quite disconnected from the practice of the law (for instance, to saw a cord of hickory wood daily) or to appear in public in an outlandish or in an archaic dress—for instance, with a cocked hat, sword and knee-breeches—then it might be urged with plausibility that such order or law imposed an unnatural and undignified and illegal burden upon him and infringed upon his personal rights as an American citizen and gentleman.

But orders of court requiring an attorney to address the
122 courts standing, or to compress his remarks within a given time, or laws providing that he shall notify his client of a certain order or of a certain notice that is served upon him in the case in which he is employed, are not amenable to the criticisms visited on the section in question by the motions under consideration.

If we may not be allowed to adopt the quaint conceit, once indulged in, that the idea of monopoly may have originated in Joseph's corn and land dealings in Egypt (Gen. Chap. 41; *Ibid.* 47 q. v.), or the no less playful conceit of a certain ecclesiastical scholar to the general effect that illegal trusts were hinted at in Rev. 13; 16-17 (q. v.), yet we feel at least on solid ground on the proposition that statutes leveled against monopolies are buttressed upon the wisdom of the common law, and this court, constrained and enlightened by events of current history, is not required and does not deem itself invited to approach the interpretation of such statutes with a hostile or sour predisposition to drive a coach and six through them but, on the other hand, while sedulously protecting the rights and liberties of the individual from insidious approaches under whatever artful guise, we should at the same time not lose sight of the rights of the community and should endeavor to advance the beneficent purpose underlying such laws, (State ex inf. vs. Armour Packing Co., 173 Mo. 356), where it can be done without doing violence to constitutional provisions; and in our opinion no constitutional provision is impinged upon by the law providing for such notice nor by the notice itself, so far as it relates to the means employed in procuring the attendance of witnesses.

In arriving at this conclusion we are somewhat influenced by several other propositions. For example, while for certain purposes a corporation is deemed a person and entitled to the benefits of any law regulating the rights of a person, yet this is only *sub modo*, because for other purposes such artificial entity occupies a peculiar position in the law. Thus, unlike a natural person, it may not go into another State and transact business without the permission or against the will of such State. Hooper vs. California,
155 U. S., l. c. 652 and cases cited. Orient Insurance Co.
123 vs. Daggs, 172 U. S., l. c., 566. Daggs vs. Ins. Co., 136 Mo., l. c., 361.

It logically results from this recognized doctrine that a State may withhold or regulate and grant license to do business under legislative restrictions, not inimical to the Federal prerogative relating

to interstate commerce or other high Federal governmental function. It is but taking one step further in the evolution of the argument to hold, as we do, that when a corporation, having no right to come into a State, other than that of its own creation, for business purposes, except by virtue of its license and the expressed legislative will of the State so invaded, does come into such sister State under a license, as in this case, a contract to obey existing laws pertaining to the granting of that license and the right to hold under that license is implied. In this view the law must be read into the license, and in this view it is not going too far to hold that when the Republic Oil Co. of New York was granted and accepted a license to do business in Missouri, it agreed and contracted with this State that notice to appear and testify in any suit affecting that license or the right to do business thereunder, served upon its attorney of record in that case, should be deemed and taken as due notice to the corporation. This is well within the reasoning of Daggs vs. Ins. Co., 136 Mo., l. c., pp. 398-9, and other cases that might be cited.

Nor does it seem laying an unfair burden upon such corporation to require it to produce its specified officers and agents at a reasonable time and suitable place within this State to give their testimony in such cause. And this is so, because a corporation by virtue of its infirmity as an artificial person can testify in court, or otherwise, can speak or act, only through officers or agents in ordinary transaction in matters incident to its business affairs. Like the man under authority, who had soldiers under him, it says to one of these agents or officers, go, and he goeth—to another, come, and he cometh, and to its servant, do this, and he doeth it. By virtue of such commands its officers and agents fetch and carry. They come into a State and establish a business and thereafter shape and control it. If, then, the voice of its over-lord, its real paramount
124 master, which master it must not be forgotten is the law itself, requests of it the presence of one or more of its officers or agents, for the solemn and just purposes of the law, it cannot be said as a matter of *a priori* reasoning that it is at liberty to refuse to do for the law what it is constantly doing for itself, *sua sponte*, to-wit, send such officers or agents within the jurisdiction of the courts of this State.

The immediate question now up for consideration seeks only the right of the State to lay such duty upon the corporation and the duty of the corporation to respond to such order. In this condition of things the constitutionality of §8984 is bitterly assailed. The section provides that if such officer or agent, etc., do not appear to testify and do not produce whatever books and documents be ordered produced by the court, or by the officer authorized to take such evidence, then it shall be the duty of the court upon the motion of the Attorney-General to strike out the answer, motion, reply, demurrer or other pleading, then or thereafter filed in said action or proceeding by said corporation whose officer or agent, etc., is in default and proceed to render judgment by default against said corporation. But in the view we take of this matter the constitution-

ality of §8984 is prematurely raised. No concrete controversy is presented on that section for our consideration and it is believed that it would be an unwise *obiter* for us at this time to consider the mere academic question of what would or should legally follow if such officer or agent, so in good faith ordered by the corporation to appear, of his own will and thereafter chose to disobey such order. No such disobedience is before us. The Attorney-General has neither filed a motion based on such disobedience nor could he do so in the present state of the controversy. We will, therefore, not consider what may happen if such corporation place itself in the attitude of wilful default. Nor will we now consider by way of anticipation whether the master of such defaulting servant, who may show itself to have done all it could do to procure his attendance, and who may have discharged such unfaithful agent or officer for his disobedience withal, should be punished without its own fault for the
125 mere default of another—all these questions are not before us at this time and will not be passed upon.

The matter of the reasonableness and constitutionality of Sec. 8983, and those immediately following was before us in State ex inf. vs. Continental Tobacco Co., 177 Mo., 1, and while this court did not pass upon such constitutionality in that case, yet, *arguendo*, such constitutionality was conceded and the whole question rode on the definiteness of the application and the order and their showing of material in the testimony and the competency of the witnesses. (pp. 42-3.) Comment, too, was made upon the fact that the expenses of the witnesses were not tendered or provided for in that case. In this case the Attorney-General has offered to deposit in court such expenses. In this case, too, the materiality of the evidence is set forth with a wealth of precision and detail. Nor have we any doubt upon the competency of the witnesses to testify under the showing made in the information and in the application and order.

Howbeit, if it should happen, when such witness appears, that questions are propounded which, under oath, the witness declined to answer because, forsooth, it was claimed by the witness, under oath, that his answer would tend to criminate him, and if our commissioner rule thereon, and if on his final report here exceptions be made to such ruling, or to the evidence elicited, or if such commissioner commit the witness for refusal and a writ of *habeas corpus* be sued out, then, and for the first time the precise question would arise which counsel have sought to inject into this hearing but which we do not consider lodged here now. We will not assume that such questions will be asked, nor will we assume that the witness under oath will assert such privileges, nor will we assume that our learned commissioner is not well equipped to judicially dispose of such questions as they arise at the hearing before him, or that he will err in the first instance unless guided by a pronouncement from us in advance.

In putting the matter to one side it will not be amiss to say, however, that at first blush it would appear that our legislature
126 had attempted to provide an immunity for such witnesses in order to coerce their testimony; for having provided in a

prior section, 8972, as follows: "Provided, that no statement made by any person in any affidavit made under provisions of §§ 8973 and 8974 of this article shall be competent as evidence against such person in any criminal prosecution brought under this section," the legislative mind again recurred to the matter in §8974, as follows: "Provided, that no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this article, *or truthfully disclosed in any testimony elicited in the execution thereof.*"

In this connection it may also be well to notice State ex rel. Attorney-General vs. The Simmons Hardware Co., 109 Mo., 118, which is cited and somewhat relied upon by respondents. That case was a proceeding against the Simmons Hardware Co. under a statute passed in 1889 (Laws 1889, p. 96). Such statute was classified by the legislature as pertaining to "Crimes and Criminal Procedure." It had penalized sections providing for fines and imprisonment, and, with no immunity provisions, sought to coerce evidence from the president, secretary or treasurer of the corporation. At the October term, 1891, of this court, section 6 of the act was held unconstitutional. But in the meantime the entire act was repealed and a new statute enacted which, with certain supplementary and amendatory legislation, now comprises articles 1, 2, 3 and 4 of chapter 143, R. S., 1899. The immunities offered by these latter statutes seem quite broad and deep and, moreover, seem somewhat to obviate the objections considered in State ex rel. vs. Simmons hardware Co., *supra*, which case must be read in the light of the canon of construction that the facts in judgment are to be considered as well as the reasoning employed.

The strong aversion held by courts to statutes which directly or by implication seem to contemplate self-incrimination has been to a degree lessened by immunity statutes passed in many states of the Union and by the Federal congress and such immunity statutes are liberally construed to advance the remedy. For example,
127 the remote possibility that a prosecution might arise in a Federal jurisdiction which would not be within the letter of the immunity provision in a State statute or which might not be within the power of the State to grant, has been held not to render such statute inoperative. Jack vs. Kansas, 26 Sup. Ct. Rep., 73. See also in this connection the reasoning of Burgess, J. in the City of St. Joseph vs. Levin, 128 Mo., l. c., 593, a prosecution under the ordinances of St. Joseph for refusing to submit for the inspection of a police officer the book required to be kept by Levin as a pawn-broker, and which reasoning tends somewhat to a similar conclusion. In this connection also the case of State vs. Davis, 108 Mo. 666, may be considered instructive. In that case, Davis a druggist, was indicted for refusing to produce before the grand jury of his county the liquor prescriptions filed by him during the previous year, when lawfully summoned to do so. A demurrer being lodged against the indictment and sustained, the State appealed and the judgment, *nisi*, was reversed. The right of the State to

enforce publicity in cases where a party was not entitled to do the thing under investigation, except by leave of the State itself (in that case to sell liquor) was enforced. And, by parity of reasoning, it may well be said that the right of the State to enforce publicity under laws permitting foreign corporations to do business in Missouri is strengthened by the reasoning of the lamented jurist who spoke for this court in that case.

(3) There remains to consider the materiality of the evidence sought in the books required to be produced. These books were the stock books of the Republic Oil Co. and the power to compel the production of books under the statute against pools and trust combinations is that found in our code of civil procedure, §737 *et seq.* and the anti-trust statute itself.

It could not be successfully contended under these sections that if the books required were not material to the controversy the order to produce would be allowed to stand. Assuming that the books in question are a history of the registration and ownership of stock in the Republic Oil Co., the question is, is such ownership material? We think it is.

128 In the first place our anti-trust statutes denounce combinations of the sort here being considered as a "conspiracy to defraud." §§8965 and 8966. Now, in investigating fraud, it is elementary that courts tolerate a wide latitude and a minute search; for fraud, originating in oblique cunning, is often deeply laid away and may be got at alone by the keenest scrutiny, by acute probing and sometimes by the aid of indirection, a weighing and shifting of motives, and, again, the putting together of trivial circumstances may furnish persuasive evidence of fraud. As said in Adriance vs. Arnot, 31 Mo. 471, "When a question of fraud is before a jury and the witness is competent the apparent irrelevancy of the testimony is an unsafe ground for its exclusion." As was said in Hopkins vs. Seivert, 58 Mo. 201, "Very slight circumstances, therefore, may, although apparently trivial and unimportant of themselves, afford, when combined together, irrefragable proof of fraudulent intent." As was said in Massey vs. Young, 73 Mo. l. c., 273-4, "Fraud is rarely ever susceptible of positive proof, for the obvious reason that it does not cry aloud in the streets, nor proclaim its iniquitous purposes from the housetops. Its vermiculations are chiefly traceable by 'covered tracks and studious concealments.' * * * And though fraud is not to be presumed, yet it is as legitimate to infer its existence from surrounding circumstances pointing unmistakably to a wrongful purpose, as it is to thus infer under similar circumstances the commission of a crime; and this is done daily." Indeed, fraud is as illusive and subtle as the wind, of which it is said: The wind bloweth where it listeth and thou hearest the sound thereof, but canst not tell whence it cometh and whither it goeth, and its investigation of necessity needs scope and somewhat free rein.

It may be admitted that under some circumstances corporations with no community of interest as holders of stock in each other, or even where the stock was not in the hands of a holding company

as trustee, might be guilty of a violation of our anti-trust law. It might further be admitted that a trust or combination might be proved by the overt acts of the agents of respondent corporations sufficiently distinctive and significant and of such long con-
129 tinuance as would tread back and tend to establish the obnoxious pact or trust agreement. (State ex inf. vs. Firemen's Fund Ins. Co., 52 Mo. l. c. 36 *et seq.*) Yet, experience has shown that stock holdings showing a community of interest, while in some cases innocuous, might in given cases be the very root from which the trust agreement grows. On principle, why may not this root be got at? In an investigation intended to lead up to the establishment of a fraudulent conspiracy between individuals, taking for illustration a fraudulent disposition of property, it could not be denied that kinship or close business intimacy would be relevant matter, for what it was worth, be that worth much or little, and we can perceive no good reason why this investigation may not commence at the very groundwork of these corporations, showing, if fact it be, a close relationship in stock holdings and in the personnel of officers and agents, the use of the same instrumentalities and methods, simultaneous in time and originating in the same radiating center—a sort of pre-natal, natal or else post-natal disposition to combine, as it were—to be followed, of course, by sufficient proof indicating that the community of stock interest, if any, had been used as a foundation upon which to build the illegal structure denounced by the statute.

In cases where doubt exists proof of motive may fill an office in the administration of the law. So that, without at this time intimating to our special commissioner the weight to be given to a community of interest in stock or the existence of stock ownership in the same individuals, or to the use of stock for a joint purpose, if any be shown, suffice it to say that we hold the ownership of stock a matter material to the pending investigation under the pleadings before us.

As to the contention that the stock book by express statute must be kept in New York, it must be apparent, first, that no such law is shown to exist, and, second, if it does exist, no reason is apparent why an exemplified and duly authenticated and compared copy of stock book entries might not be furnished.

Nor must anything we have said herein be construed to mean that in default of the production of the book itself, or pending its production, the best secondary evidence obtainable of stock ownership may not be introduced by the Attorney-General.

We have considered all questions we deem material on this branch of the case, at this time, and are persuaded the motions should be overruled. It is accordingly so ordered.

130 We come now to the consideration of another group of questions submitted to us. It seems that during a hearing before the special commissioner the Attorney General filed a petition to compel the inspection of a certain written contract alleged to exist between the Waters-Pierce Oil Co., or between a partnership composed of Pierce and Waters (alleged to be the predecessor of the Waters-

Pierce Oil Co.) and a certain corporation known as the Consolidated Tank Line Co., said contract alleged to be in the possession of the Waters-Pierce Oil Co.

It seems, furthermore, that the Attorney General filed a petition before the special commissioner the object and general nature of which was to compel the production of certain books and papers showing regular reports, of the amount of oil it sells in the state of Missouri, to certain parties at 26 Broadway in the city of New York, at which place is maintained the offices of the Standard Oil Co. and the Republic Oil Co.

It seems, furthermore, that two other petitions were filed before said special commissioner by the Attorney General, one of them alleging that orders received by the Waters-Pierce Oil Co. for oil consumers in the Missouri territory, alleged to be allotted to the Standard Oil Co., are sent by said Waters-Pierce Oil Co. to the Standard Oil Co. to be filled; and *vice versa*, that orders received by the Standard Oil Co. from oil consumers in the Waters-Pierce Oil Company's territory are sent by the Standard Oil Co. to the Waters-Pierce Oil Co. to be filled; and that a record is made by the Waters-Pierce Oil Co. and the Standard Oil Co. of orders thus transmitted. An order is accordingly prayed requiring the Waters-Pierce Oil Co. to produce any books, papers and documents in its possession showing the transmission of such orders from Waters-Pierce Oil Co. to the Standard Oil Co. The other petition was directed to the production of books, papers and documents alleged to exist relating to a certain contract or agreement made by the Waters-Pierce Oil Co. with the Consolidated Tank Line Co. or the Standard Oil Co.
in the division of trade territory in the state of Missouri,
131 the said Tank Line Company having been absorbed by the Standard Oil Co.

All said petitions were duly sworn to and upon them the commissioner ruled that the said books, papers and documents should be produced before him at a certain definite time and place, or cause should be shown why the same should not be produced.

Afterwards the issuance and service of this order were waived and thereafter the said Waters-Pierce Oil Co. filed a return to the order to show cause. This return to the order to show cause is pending before the said commissioner, and in it respondent sets forth divers reasons why, it says, it should not be complied with. The sufficiency of this return is also submitted to us.

During the pendency of the foregoing matters the Attorney General sued out a subpœna *duces tecum* which, issued by the commissioner and directed to C. M. Adams and R. B. Backus, was served upon Adams alone, who is the secretary of the Waters-Pierce Oil Co. This subpœna required the presence of Mr. Adams as a witness and that he produce certain designated and divers and sundry papers, books, documents, checks vouchers, receipts, letters, copies of letters, maps, etc., at a specified time and place. Adams appeared as a witness, whereupon, respondent Waters-Pierce Oil Co. filed a motion to quash said subpœna and such subpœna and motion to quash are also

certified here by our commissioner at the request of counsel on both sides for our action.

It furthermore seems that without passing on the motion to quash the subpœna, the special commissioner required that Mr. Adams be sworn and compelled to testify. During his examination, lengthy portions of which are before us, many objections were made to questions propounded to him, some being ruled against respondents and others in their favor. By one of these questions this witness was compelled to answer that he was a stockholder in the Waters-Pierce Oil Co. Strenuous objection was made to going into the ownership of stock, but the commissioner ruled in favor of the Attorney General. This question was followed by others directed to wit-
132 ness' knowledge of the other stock-holders in the Waters-Pierce Oil Co. and these questions were allowed by the commissioner over objection by respondent.

At this stage of the examination, by the advise of respondent's counsel and after the commissioner had ruled that examination into the ownership of stock was material (all of which is in accordance with our own holding in the prior part of this opinion), the witness under the advice of counsel and on the theory that the question was privileged, we suppose, declined to answer a certain question. The transcript shows as follows:

"Q. Isn't it a fact, Mr. Adams, that at the present time the Standard Oil Co. owns or controls, either by itself or through a person for it, approximately two-thirds of the stock of the Waters-Pierce Oil Co.?

Mr. PRIEST: Objected to for reasons last above stated.

COMMISSIONER: I don't think the objection is well taken.

To which action and ruling of the commissioner the respondents and each of them duly excepted at the time and still except.

Mr. JOHNSON: We advise the witness not to answer on the ground stated." (As heretofore stated these grounds related to the question of privilege, as we understand the record). * * *

"A. I decline to answer."

Following this a question was propounded to the witness as to whether he makes out the dividend checks of the Waters-Pierce Oil Co. at the present time. This question was objected to and ruled proper by the commissioner, and exceptions were saved. Counsel advised the witness not to answer and the witness refused. Following that, the ensuing questions, objections, colloquies, and rulings developed:

"Q. Do you not know it to be a fact, Mr. Adams, that a dividend check is sent monthly, or as often as declared, to H. Clay Pierce, representing the dividend upon approximately three thousand nine hundred and ninety-six shares of the stock of the Waters-
133 Pierce Oil Company, and that two-thirds of that amount is regularly turned over by Mr. Pierce to Mr. Tilford, or some other representative of the Standard Oil Company at 26 Broadway?

Mr. PRIEST: I object to the question in the form it is in. It is complex and compound.

COMMISSIONER: The objection will be overruled.

To which action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time, and still except.

Mr. HADLEY:

Q. Answer the question, Mr. Adams?

Mr. PRIEST: I object to it on the further ground that it is totally immaterial to this issue; that whatever information the witness had he had as an executive officer of the Waters-Pierce Oil Company, for whose acts he was responsible as an executive officer; whatever might be inflicted upon it by reason of these proceedings would be chargeable to him personally, as well as to it; that the testimony is totally immaterial under the issues in this case; that there is no charge in the bill of any misconduct on the part of the stock-holders of the Waters-Pierce Oil Company, and the amount of dividends received by them, or anyone of them, is totally immaterial; he is called upon to testify to facts which, if material, as contended by the State in this case, would *compose* upon him as a stockholder of the Waters-Pierce Oil Company a forfeiture and inflict upon him personally a punishment or form a chain in the link of testimony tending in that direction.

Which objection was by the Commissioner overruled, and to the action of the Commissioner in overruling said objection the respondents, and each of them, then and there duly excepted at the time, and still except.

Mr. JOHNSON: We advise the witness, under the circumstances, not to answer the question.

Mr. HADLEY:

Q. Do you decline to answer, Mr. Adams?

134 A. I decline to answer.

Q. For the reasons given by Judge Priest?

A. Yes, sir.

Q. You were subpœnaed to bring the stock book of the Waters-Pierce Oil Company here with you, were you not?

A. I think that was mentioned.

Q. Have you complied with that subpœna?

A. I have not brought it; no, sir.

Q. Are you willing to do so?

Mr. PRIEST: I submit that he has no power to do so, and he has made his return in writing, and a motion to quash has been made by the Waters-Pierce Oil Company in writing, and sworn to by him, and the witness adopted that statement in that motion to quash as sworn to by him, and he has been advised by counsel of the Waters-Pierce Oil Company that he cannot produce rightfully, and that he declines to produce in consequence of that advice, the b and papers specified in the subpœna.

COMMISSIONER: The proper course is for the witness to be interrogated as to his custody of the documents, and if he has not produced them, to give his reasons why.

To which action and ruling of the Commissioner the respondents and each of them, then and there duly excepted at the time, and still except.

Mr. HADLEY: I assume that in my question.

Mr. PRIEST: The paper which he has sworn to states the fact of his custody.

COMMISSIONER: I don't understand that that paper filed here, at least I doubt very much whether that would constitute an answer for the witness himself. He is now on the stand and sworn, and he must answer these preliminary questions, whether or not he brought the book, whether or not it is in his custody, and if he did not bring it, why he did not bring it.

135 To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time, and still except.

Mr. HADLEY:

Q. The stock book of the Waters-Pierce Oil Company is in your custody, isn't it, Mr. Adams?

A. It is in a safe in our office.

Q. You have charge of it as secretary of the company, have you not, and access to it?

A. I have access to it and others have access to it; other officers of the company.

Q. You are secretary of the company and as secretary have charge of the stock book of the company, do you not?

Mr. JOHNSON: Isn't that a question of law, General?

COMMISSIONER: The only question is whether he has access to it and could get it and produce it here. I will permit the question.

To which action and ruling of the Commissioner the respondents, and each of them, then and there duly excepted at the time, and still except.

Mr. HADLEY:

Q. Answer the question. Have you got the custody of that stock book of the Waters-Pierce Oil Company?

A. I can't say that it is wholly in my custody.

Q. Could you get it in your custody and bring it here in response to this subpœna if there were no legal objections raised by the Waters-Pierce Oil Company to your doing so?

A. I would not consider that I had any right to take that book out of the safe and bring it here without authority.

Q. From whom?

A. From a superior officer.

Q. Even if a court should order you to bring it here?

A. I have no jurisdiction over that book. It is not in my custody to that extent that I could take it out of the office.

Q. Well, it is in your care, is it not, and in your office as secretary?

A. It is in the safe in the office.

6 Q. And the laws of this State, provide, do they not, to your knowledge, that the secretary of the corporation shall ve charge of the stock book of the corporation?
A. I don't know about the legal aspect of the matter.

Mr. PRIEST: We object to the question.
COMMISSIONER: Objection sustained. * * *

Mr. HADLEY:

Q. Have you brought that stock book here?
A. I have not.
Q. Are you willing to produce it here?
A. Not unless counsel advise me to do so.
Q. Why have you not brought it here?

Mr. PRIEST: I submit that the witness has answered that ques-n.

COMMISSIONER:

Q. Mr. Adams, you may state whether or not that was the reason did not bring that book?
A. Under advice of counsel I was told that it would not be neces-y to bring it here.

Mr. HADLEY:

Q. Is that the only reason why you have not brought it?
A. Yes, sir.

Thereupon the matter, to-wit, whether the witness should be pelled to answer each and every of said propounded interroga-es and produce said stock book, etc., was also certified to this rt by the consent of counsel on both sides and the acquiescence the commissioner.

n briefs here it is asserted by respondents and denied by in-nant that a question was certified relating to the materiality of dence tending to show stock ownership. As we understand the rd before us, no such question was certified by our commis-er. To the contrary, he had invariably ruled on the question nateriality against respondents, and, as said before, his rulings to the same effect as our holding in the former part of this ion. But it makes no difference whether the question of materiality was certified here or not, because in our opinion we should decline at this time to pass upon any of the peti-tions, orders subpœnaes, motions, returns, objections and tions certified to us by the commissioner. Because, if, in spite ur submission of this case to a special commissioner, we are to equired, as the ingenious versatility of counsel, on either side ointly, may suggest, from time to time to issue orders to our nissioner to rule this way, that way or the other way upon tions pending before him, or to withdraw, *pro tanto* and *pro vice*, our submission and take upon ourselves the burden of the on interlocutory matters, the very object of the submission ld be manifestly and largely defeated. This court has im-

pliedly complimented its commissioner, by virtue of his appointment to conduct this important investigation, as possessed of unsullied integrity and equipped with legal learning adequate to passing on testimony and ruling on matters presented to him and clothed him with power to enforce his rulings. The object of this reference was that, enlightened by the testimony preserved and assisted by the rulings and findings, the learning and research of our commissioner, we should be supplied with data necessary to determine once for all, on exceptions to his final report, the very right and justice of this cause. He is proceeding, so far as we can see, with circumspection and dignity to carry out the warrant of authority in our order of submission. We see nothing in any of his rulings requiring our interposition and certainly we will not assume that he will hereafter proceed in a manner contrary to due process of law or to the orderly administration of justice. We are aware of no analogies of the law in our practice sustaining the present submission to us. Certainly it is not the practice in this state for a referee to be required to report intermediate matters to the court appointing him for instruction from the court, nor is it the usual practice for a master in chancery, from time to time, to refer matters to the court appointing him so that he may be controlled in his rulings on evidence or other matters within the warrant of his authority. All these things are settled, by and large, upon his final report. If it then appears he has erred in the admission of evidence, that evidence is excluded. If he has excluded proper evidence, the case may be sent back to him to hear and consider such evidence. If a witness decline to answer on the ground that his answer would incriminate him and is committed by the commissioner on the theory that the question is not privileged because the statute
138 had granted immunity, or for other reasons, we see no reason why a witness should not take the same chance a defendant does when he stands on a demurrer to a petition and finds when too late, maybe, on appeal that the petition was good and the judgment final and impregnable. At least, we are not willing to sanction any innovation by inaugurating the practice of applying here for instructions to a commissioner. He should be left free and uninfluenced by us to exercise in the first instance his judicial judgment. Nor does the importance of the case, or the fact that distinguished counsel are employed, or the gravity of the questions raised, demand that we should respond to anomolous requests. If we make such rule in this case, then, by the same token it must be the rule of practice in every submission to a special commissioner on an original proceeding instituted here, and we will be compelled to consider certifications on interlocutory matters, however humble the case, however obscure the counsel employed, or however simple the matter involved.

The matters certified to us are, therefore, recertified to our special commissioner that he may proceed therewith and with all other matters pertinent to this hearing under the broad and flexible power given him by his order of appointment.

Brace, C. J., Gantt, Valliant, & Marshall, JJ. concur. Burgess and Fox, JJ. concur in the result.

HENRY LAMM, *J.*

139 And afterwards, to-wit, on the 7th day of March, 1906, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resp.

Comes now the said informant and files his motion for a supplemental order herein:

Which said motion is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court en Banc, October Term, 1905.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and Republic Oil Company, Corporations, Respondents.

Motion for Supplementary Order.

Comes now Herbert S. Hadley, Attorney General, who in this behalf prosecutes for and in the name of the State of Missouri, and shows to the Court that heretofore, to-wit: upon the 28th day of September, 1905, he presented to the Honorable James D. Fox, one of the Judges of the Supreme Court of Missouri, an application under and in accordance with the provisions of Section 8983, R. S. 1899, asking for an order requiring the presence of C. L. Nichols, the President, and W. T. McKee, the Secretary of the Republic Oil Company, together with certain books, papers and documents in their possession before the Honorable Robert A. Anthony, Commis-
140 sioner in the above entitled cause, upon the 18th day of October, 1905. That thereupon and upon said application, an order was made and notice signed by the said James D. Fox, directed to Messrs. Frank Hagerman and A. D. Eddy, attorneys of the Republic Oil Company, requiring them to have the witnesses named in said application, together with the books and papers described herein before the Honorable Robert A. Anthony in the Court Room of the St. Louis Court of Appeals in the City of St. Louis on the 18th day of October, 1905. That thereupon, upon the 10th day of October, 1905, the said Frank Hagerman and A. D. Eddy, counsel of record for the Republic Oil Company and the Standard Oil Company of Indiana, filed a motion asking the Court to set aside the order made and notice signed by the Honorable James D. Fox in response to said petition of the Attorney General; and thereupon, on said 10th day of October, 1905, the said Waters-Pierce Oil Company, through its counsel of record, also filed a motion asking the Court to set aside

the said order made and the notice signed by the Honorable James D. Fox in response to the said petition of the Attorney General.

And that thereupon upon the first day of November, 1905, the said motions to set aside said order and notice upon the attorneys of said Republic Oil Company, came regularly on for hearing before the Court en Banc, and the argument of counsel being heard, thereafter briefs were filed, and said matter was taken under advisement and consideration by the Court. That by reason of the fact that said motions asking for the setting aside of said order and notice were under advisement by the Court, said witnesses named in said petition of the Attorney General did not appear before said Robert A. Anthony in the City of St. Louis upon the 18th day of October, 1905. That thereafter upon the 26th day of February, 1906, the Court rendered a decision overruling the said motions to set aside the order made and notice signed by said James D. Fox upon the 28th day of September, 1905, as aforesaid.

The hearing of testimony before the said Robert A. Anthony in said above entitled cause has been continued from time to time, and upon the fifth day of March, 1906, at the City of St. Louis,
141 the said Robert A. *Robert* A. Anthony adjourned the further hearing of evidence in said cause until the 19th day of March, at the Southern Hotel in the City of St. Louis. That upon the fifth day of March, 1906, notice was given before said Robert A. Anthony, to the attorneys of record of the Republic Oil Company, the Standard Oil Company of Indiana and the Waters-Pierce Oil Company there present, that this motion would be presented to the Court and a copy thereof was upon the 6th day of March, 1906, mailed to the attorneys of record of said respondents.

Wherefore, by reason of the facts herein stated, Herbert S. Hadley, Attorney General, moves the Court to make a supplementary order modifying the order hereinbefore made overruling said motions of respondents, and that the said attorneys of the Republic Oil Company, towit, Messrs. Frank Hagerman and Alfred D. Eddy, be directed and required to produce C. L. Nichols, the president and W. T. McKee, the secretary of the Republic Oil Company, before the Honorable Robert A. Anthony, Commissioner herein at the City of St. Louis, at the Southern Hotel, at ten o'clock, A. M., upon the 19th day of March, 1906, in order that they may then and there answer such competent, legal and material questions as may be put to them touching their knowledge of the issues in the above entitled cause, and that they be further required and commanded to have said W. T. McKee produce and present at said time and place mentioned, the stock book of the Republic Oil Company in order that the same may be offered in evidence, and that a copy of this supplementary order be served upon said counsel of the Republic Oil Company, and the counsel of the other respondents herein.

HERBERT S. HADLEY,
Attorney General.
JOHN KENNISH,
Ass't Attorney General.
RUSH C. LAKE,
Ass't Attorney General.

142 And afterwards to-wit, on the 8th day of March, 1906, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resp.

Comes now the Republic Oil Co., by attorney, and files its motion for a rehearing herein;

Which said motion for rehearing is in words and figures as follows, to-wit:

In the Supreme Court of Missouri.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and Republic Oil Company, Corporations, Respondents.

Motion for Rehearing.

Now comes the Republic Oil Company and moves the court to grant a rehearing herein for each of the following reasons:

1. There was error in holding that the proviso in section 8974 grants immunity to any person testifying in this case. The Attorney General never so claimed; no such question was ever discussed; and an important question of that kind should only be decided after the fullest argument.

143 (*a*) The proviso reads "Provided that no corporation, firm association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this article, or truthfully disclosed in any testimony elicited in the execution thereof." This was part of the act of 1891 (Laws of 1891, p. 186) when the word "article" read "act." The substitution of the one word for the other was made in the revision of 1899 without any legislation upon the subject. Hence, section 8974 is by the express terms of section 4189, a mere continuation of the act of 1891, and could have no reference whatsoever to section 8983 which was first passed in 1899 (Laws 1899, p. 318), and no provision for immunity under the act of 1891 would apply to an independent act passed for the first time in 1899.

(*b*) But the immunity granted is only as to testimony given in the enforcement of the act of 1891; that is to say, as provided by the act (Section 8975) by proceedings in the circuit court; the jurisdiction here is constitutional; this proceeding is not to enforce any statute, but this court has the right to inquire as to the misuser of a corporate franchise by virtue of its constitutional jurisdiction in quo warranto. No statute can add to or take away the power of the court, and hence, the provision as to immunity in actions to execute the act of 1891 cannot apply to a proceeding in this court.

(*c*) But the immunity is given only against criminal prosecutions by reason of anything truthfully disclosed. In other words, there must be a disclosure, and it must also be truthful. If there is no disclosure of any criminal offense, although facts may be shown forming a link in the chain, there would be no immunity; so, unless every word testified to was true, immunity would not exist. Such legislation "to be valid must afford *absolute immunity* against future prosecutions for the offense to which the question *relates*." (Counselman v. Hitchcock, 142 U. S. 547, 35 L. Ed. 1110, 1122; Brown v. Walker, 161 U. S. 591, 40 L. Ed. 819.) This rule was applied in Ex parte Irving, 74 Fed. Rep. 963, and Lamson v. Boyden, 160 Ill., 620, 43 N. E. Rep. 783.

2. There was error in holding that a foreign corporation
144 could not plead the unconstitutionality of section 8983. There is no such condition to the granting of a franchise and there is no authority that justifies the statement that a foreign corporation impliedly agrees to obey a law of this character.

3. The only penalty authorized for a failure to comply with section 8983 is the rendition of a judgment of ouster, which would not be due process of law, as decided in Hovey v. Elliott, 167 U. S. 409, 42 L. Ed. 215. And it is simply begging the question to say that this court will not determine whether it can enforce the order to be made under this statute until it is disobeyed. The very provision imposing the penalty makes the entire act unconstitutional, because the two provisions cannot be separated.

4. Section 8983, 8984 and 8985 are invalid and unconstitutional in that they are in contravention and in violation of the fourth and fourteenth amendments to the constitution of the United States, denying to this respondent the equal protection of law, discriminating between resident and non-resident persons and corporations, condemning respondent, taking its property without due process of law, and unlawfully attempting to extend the process of this court beyond the territorial limits of the state.

5. Questions decisive of the case and duly submitted by counsel have been overlooked by the court, and the decision is in conflict with an express statute, and with controlling decisions, to which the attention of the court was not called through the inadvertence of counsel. The questions decisive of the case, so overlooked by the court are: (*a*) The order to produce in this state the officers of the company and its stock books compels defendant to testify against himself in a criminal case, contrary to the provisions of the constitution; (*b*) The enforcement of the act deprives respondent of due process of law.

The express statute and controlling decisions with which the decision is in conflict, to which the attention of the court was not called through the inadvertence of counsel are as hereinbefore set forth.

6. The stock book of the Republic Oil Company is wholly
145 immaterial. No stockholder is a party defendant, so the doctrine of the Northern Securities case has no application. No allegation is made in the petition as to stock ownership, and the

suit is against the respondents as legal entities. In the Tobacco Trust case, 177 No. 1, the precise question was decided to the contrary, and the only suggestion made in the opinion as to the materiality of the testimony is that it might aid in proving a motive. In the Beef Trust Case (State ex inf. Crow v. Armour Packing Co., 173 Mo. 356), it was decided that the combination prohibited by statute could not be defended upon the ground that it was based upon a good motive, so it must follow if good motives cannot be proven, bad motives are wholly immaterial. The opinion upon this subject cannot stand unless the Tobacco Trust and Beef Trust Cases are overruled, and it is not fair to pass those cases silently by without overruling them or in any wise attempting to distinguish them. There is no pretense that any one of the respondents has any interest in the stock of either of the others, nor is there any reference to stock ownership at any place in the information.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Republic Oil Company.

To the Informant:

Please take notice that a petition for rehearing, a copy of which appears above, will be on file in the Supreme Court of Missouri on March 8th, 1906.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Republic Oil Company.

Receipt of copy of foregoing notice and motion acknowledged this March 8th, 1906.

HERBERT S. HADLEY,
Attorney General.

146 And afterwards to-wit, on the 10th day of March, 1906, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
vs.
STANDARD OIL CO. et al., Resp.

Now at this day, the court having fully considered and understood the motion for rehearing, heretofore filed by the Republic Oil Co., doth order that said motion be, and the same is hereby overruled.

And on the day last aforesaid, the further following proceedings were also had in said cause, viz:

147 In the Supreme Court of Missouri, Court in Banc, October Term, 1905.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Order.

Now on this day the motion of the Attorney-General asking for a supplementary order modifying the order heretofore made in the above entitled cause by this court coming regularly on to be heard, and it appearing to the court: That upon the 28th day of September, 1905, the Attorney-General presented to the Honorable James D. Fox, one of the judges of the Supreme Court of Missouri, an application under and in accordance with the provisions of section 8983, R. S., 1899, asking for an order requiring the presence of C. L. Nichols, the president, and W. T. McKee, the secretary of the Republic Oil Company, together with certain books, papers and documents in their possession before the Honorable Robert A. Anthony, commissioner in the above entitles cause, upon the 18th day of October, 1905; that thereupon and upon said application, an order was made and notice signed by the said James D. Fox, directed to Messrs. Frank Hagerman and A. D. Eddy, attorneys of the Republic Oil Company, requiring them to have the witnesses named in said application, together with the books and papers described therein, before the Honorable Robert A. Anthony in the court room of the St. Louis Court of Appeals in the City of St. Louis on the 18th day of October, 1905; that thereupon, upon the 10th day of October, 1905, the said Frank Hagerman and A. D. Eddy, counsel of record for the Republic Oil Company and the Standard Oil Company of Indiana, filed a motion asking the court to set aside the order made and notice signed by the Honorable James D. Fox in response to said petition of the Attorney-General; and thereupon, on said 10th day of October, 1905, the said Waters-Pierce Oil Company, through its counsel of record, also filed a motion

148 asking the court to set aside the said order made and the notice signed by the Honorable James D. Fox in response to the said petition of the Attorney-General; and that thereupon, on the first day of November, 1905, the said motions to set aside said order and notice upon the attorneys of said Republic Oil Company came regularly on for hearing before the Court en Banc, and the argument of counsel being heard, thereafter briefs were filed and said matter was taken under advisement and consideration by the court. That by reason of the fact that said motions asking for the setting aside of said order and notice were under advisement by the court, said witnesses named in said petition of the Attorney-General did not appear before said Robert A. Anthony in the City of St. Louis

upon the 18th day of Octo'er, 1905; that thereafter upon the 26th day of February, 1906, the court rendered a decision overruling the said motions to set aside the order made and notice signed by said James D. Fox upon the 28th day of September, 1905, as aforesaid. The hearing of testimony before the said Robert A. Anthony in said above entitled cause has been continued from time to time and upon the fifth day of March, 1906, at the City of St. Louis, the said Robert A. Anthony adjourned the further hearing of evidence in said cause until the 19th day of March, at the Southern Hotel in the City of St. Louis; that upon the 5th day of March, 1906, notice was given before said Robert A. Anthony, to the attorneys of record of the Republic Oil Company, the Standard Oil Company of Indiana and the Waters-Pierce Oil Company there present, that this motion would be presented to the court and a copy thereof was upon the 6th day of March, 1906, mailed to the attorneys of record of said respondents.

It is therefore ordered, adjudged and decreed that said Frank Hagerman and A. D. Eddy, attorneys of the Republic Oil Company be and they are hereby commanded and required to produce before the Honorable Robert A. Anthony, commissioner herein, upon the 19th day of March, 1906, in the City of St. Louis at ten o'clock a. m. at the Southern Hotel, C. L. Nichols, the president, and W. T. McKee, the secretary of the Republic Oil Company, then and
149 there to answer such competent, relevant and material questions as may be put to them touching their knowledge of the issues in the above entitled cause. And you are further required and commanded to have the said W. T. McKee produce and present at said time and place the stock book of the said Republic Oil Company in order that the same may be offered in evidence.

150 And afterwards, to-wit, on the 11th day of February, 1907, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Comes now the Standard Oil Company and the Republic Oil Company by attorney, and file their amended answer and return herein:

Which said amended answers and returns are in the words and figures as follows, to-wit:

151 In the Supreme Court of the State of Missouri, October Term, 1904.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Answer and Return of Republic Oil Company, One of the Above-named Respondents.

Now comes said respondent and, for answer and return to information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all the times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the state authorizing and permitting foreign corporations to do business therein, and having a license from the state authorities so to do; it was at all the times mentioned in the information engaged in the business of selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the state of
152 Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum, having expended many thousands of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the state of New York for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all the times mentioned in the information was authorized to do business in this state, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the state for such purposes; at all times herein mentioned it was engaged in the business of buying and selling the products of petroleum in this state, as it was authorized to do by its articles of incorporation, by the laws of the state, and by the license aforesaid.

The Waters-Pierce Oil Company is now, and at all the times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the state of Missouri, for the purpose, among others, of refining petroleum, and buying and selling the products thereof; and at all the times therein men-

tioned, was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

This respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding with either or any of the respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them,
153 or any other product of petroleum in Missouri, or to control or limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in said business of buying or selling naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri between the respondents or others engaged in like business, or deceive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondents or either of them, fixed or maintained the prices of naptha, benzine, gasoline, kerosene or lubricating oil, or any or either of them, or any other product of petroleum sold or offered for sale by it, or either of them, in this state, nor controlled or limited the trade of said products in this state; nor prevented or destroyed competition in the purchase or sale of said products or any or either of them in this state, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust, agreement, confederation, combination or understanding.

This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the state of Missouri between the Standard Oil Company and the Waters-Pierce Oil Company. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell any of said products in this state in a territory therein lying for the most part *south* of the Missouri River, nor is any such territory by any agreement assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or understanding, agreed not to sell, and does not sell any of said products in certain
154 territory in Missouri, lying mostly north of the Missouri River, nor is any such territory, by any agreement, assigned

to the Standard Oil Company. It is not true that the Republic Oi Company, according to any combination, confederation, agreemen or understanding, had by the respondents, or any of them, sells oi in different parts of the state in territory in which by any agree ment the Standard Oil Company does not sell and in which by an agreement the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agree ment or otherwise through the sale of oil by the Republic Oil Com pany is to supply oil to such retail dealers in the state, or others who by reason of prejudice or otherwise, against the Waters-Pierce Oi Company, or the Standard Oil Company, or for any other reason refuses to trade with either of said respondents in said alleged terri tory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, com bination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondents in the accomplishment of the purposes of any pool, trust, agreement, con federation or understanding, to crush out competitors in the sale of petroleum, by temporarily reducing the price thereof through sales made by the said Republic Oil Company, or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the state of Missouri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of product of petroleum between the said Republic Oil Company and the Waters Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are separate and distinct corporations, but it is not true that either makes any false pre-
tenses to pursuing an independent business as legitimate
155 competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents or either of them, under and by virtue of any pool, trust, combination, agreement or understanding maintained or entered into by them, deceive and mislead the public or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and had, at Whiting, Indiana and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the refining of petroleum; but it is not true that by virtue of any understanding combination, confederation, or agreement made or entered into by re spondents, or any of them, or in addition to other objects or purposes

or in addition to any other act of any respondent done in compliance with any such combination, understanding, confederation or agreement, or in the enforcement thereof, that the said Standard Oil Company has agreed to sell, or sells said products of petroleum in the state of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

156 It is not true that respondents or either of them by reason of any combination, pool, trust or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust, or understanding, have been able to control the supply, or do control and supply to the retail dealers and to the general public in the state from Eighty-five to ninety per cent or any other per cent of all the naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold for general consumption in the State.

It is not true that by virtue of any pool, trust, agreement, combination, confederation or understanding entered into by respondents, or by reason of any of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents or either of them have been able to control, or do control the prices of the products of petroleum in the state, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the state, or have limited the trade therein, or have driven out competition in said business.

It is not true that any combination, confederation, pool, trust, or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them or either of them have deprived or do deprive the public of free, full or wholesome competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occurring to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the products of petroleum, or by reason of any decep-

157 tion accomplished by respondents or otherwise that said respondents or either of them are now wilfully or unlawfully or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or controlling the prices of the products of petroleum sold in the state. It is not true, that respondents or either of them have, since the — day of ——, 1901, and up to the present time, or at any time grossly or otherwise offended against the laws of this state, or wilfully or flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise

assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges not granted to corporations by the laws of Missouri by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust, confederation or understanding, made or maintained, the respondents are now in this state unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the state of Missouri for the said products of petroleum, or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchises granted to respondents by this state, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondents by the state, and it is not true that there is or has been by any act of respondents any injury to the public.

Wherefore respondents ask to be dismissed with costs.

158 *Wherefore respondent asks to be dismissed with costs.*

The information herein is based upon the alleged violation of the provisions of each of sections 8965, 8966, 8967, 8968, 8971, 8972, 8978 of the Revised Statutes of Missouri, 1899, and seeks to enforce the provisions of each of said sections. Each of said sections is unconstitutional and void, for each of the following reasons:

(*a*) It violates the fourteenth amendment to the Constitution of the United States, wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws, nor make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

(*b*) It violates the provisions of Section 8, Article I, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several states and Indian tribes, in which commerce respondent is engaged.

(*c*) It violates Section 10 of Article I of the Constitution of the United States, which provides that no state shall pass any *ex post facto* law, or law impairing the obligations of contracts.

(*d*) It violates Section 4, Article 2, of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(*e*) It violates the provisions of Section 30, Article 2, of the Constitution of the State of Missouri, providing that no persons shall be deprived of life, liberty or property without due process of law.

(*f*) It violates Section 53 of Article 4 of the Constitution of the State of Missouri, which forbids the legislature from granting to

ny corporation, association or individual any special or exclusive ight, privilege or immunity.

(*g*) It prohibits all barter and commerce, by prohibiting any vo or more persons from agreeing upon either the present r future price of any article of manufacture, mechanism, merhandise, commodity, convenience, repair, any product of mining r any article or thing whatsoever as between themselves, whether the same tends to the prejudice of the public interest or not, 59 whether in restraint of trade, whether reasonable or unreasonable under the circumstances and limitations of such xing of prices of said commodities, with-out regard to the relation the parties to such agreement or their purposes, and in each of ch respects violates each of the foregoing provisions of the state nd federal constitutions.

(*h*) It arbitrarily discriminates as between the vendors and purhasers of such articles, in that it prohibits two or more vendors om agreeing among themselves to establish a reasonable price for ch articles of merchandise, but does not prohibit the purchaserers om agreeing to fix a price at which they may purchase said ticles, and tends to assure, and does assure, to purchasers such ices as may be established by unhealthy and ruinous competiin, but does not assure to the vendors protection or the right to otect themselves, by agreement or otherwise, against ruinous rates tablished either by unwholesome or unhealthy competition or e combination of purchasers, and in each of such respects violates ch of the foregoing provisions of the state and federal constitunns.

(*i*) It grants special privileges to the buyers of products of the aracter mentioned therein, by combination or otherwise, while nying to the manufacturers or vendors of the same the right to otect themselves against such combination, or assuring themselves the means of realizing a reasonable profit for their capital, labor d skill, and in each of such respects it violates each of the foreing provisions of the state and federal constitutions.

(*j*) It arbitrarily discriminates between different classes of prots and between labor and capital, between different kinds of inrance companies, and between different kinds of insurance, and o between different classes of persons, and in each of such reects violates each of the foregoing provisions of the state and deral constitutions.

(*k*) It applies to commodities and not to labor and other matters ich may be the subject of combination, and thereby discriminates itrarily.

Wherefore this respondent asks to be dismissed with costs.

3. Respondent re-avers each and every allegation set forth) in division 2 of this return, and further respectfully shows that the informant claims that under the law of this state l the construction of its statutes the respondent in a *quo warto* proceeding cannot attack the constitutionality of an act of legislature, the provisions of which are invoked and sought to enforced in said *quo warranto* proceedings, without admitting

a violation of the said statute. And the informant claims that this court has so decided in the case of *The State ex inf. Crow, Attorney General v. The Firemen's Fund Insurance Company et al.*, 152 Mo., 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the state depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, hereby and herein invoked.

Wherefore respondent asks to be dismissed with costs.

4. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of Sections 8965, 8966, 8967, 8971, 8972, or 8978 of the Revised Statutes of Missouri, 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the fourteenth amendment to the Constitution of the United States, the provisions of which are hereby invoked.

Wherefore respondent asks to be dismissed with costs.

5. Among other things, the relief sought in this case and the penalties prescribed by Chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, is that none of the property purchased, owned, held and used by the respondent within the State of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any
161 purpose, without incurring the penalties prescribed in Section 8972. Upon the faith and in the reliance of the certificate granted to it by the state of Missouri to do business in the said state, as averred in the information, this respondent, long prior to the enactment of said Chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said state, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said state under the certificate as aforesaid. Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and constructed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, towit: at least to the extent of 90 per cent thereof. Wherefore the respondent says that the provisions of said Section 8972 above mentioned, are in violation of Sections 4 and 30 of Article II, and Section 53 of Article IV of the Constitution of Missouri and of Section

8 of Article I of, and the fifth and fourteenth amendments to the Constitution of the United States, each and every provision of which his respondent now hereby expressly invokes in its behalf, for that he effect of the said statute and of the enforcement thereof by granting the relief prayed by the present cause will be to deprive he respondent of its said property and its use without due process f law, to deny to this respondent the equal protection of the law, nd to deprive it of life, liberty and property without due process f law, deprive respondent of the natural right to life, liberty and he enjoyment of the gains of its own industry, grant special and xclusive rights, privileges and immunities to others and interfere ith respondent continuing to buy and sell products in and ship roducts as articles of commerce to and from foreign nations and ifferent states. Said properties are used in the conduct of inter-
state commerce, so that the prohibition of the use thereof
62 operates as a regulation of interstate commerce and as a restraint upon commerce among the several states and territories and with the District of Columbia, within the meaning of he Act of Congress of July 2nd, 1890, which Act of Congress, by he express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by ongress by virtue of the power granted by the Federal Constitution. Said section 8972 is a part and parcel of an entire and complete system and the un-constitutionality of the above mentioned rovision destroys the entire chapter, or at least the article on which is action is based.

In complying with the laws of this state and in obtaining certificates and licenses to do business therein, as mentioned and set forth the information, respondent paid money to the State of Missouri, which have been held and used by the said state, and on the ith of the statutes authorizing it to do business and the licenses sued, as stated in the information, respondent invested large sums money in the State of Missouri. The licenses and rights to do siness so granted by and acquired under the laws of Missouri ere without any right or reservation on the part of the state to end, alter or repeal the same. Among other rights thereby anted by the state to the respondent was one to make any and all asonable contracts and agreements. No other kind of a contract s ever made by this respondent. Each of the provisions of Section 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised atutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the ovisions of Section 10 of Article I of the Constitution of the nited States are violated.

Wherefore respondent asks to be dismissed with costs.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Said Respondent.

163 In the Supreme Court of the State of Missouri, October Term, 1904.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Answer and Return of Standard Oil Company of Indiana, One of the Above Named Respondents.

Now comes said respondent and, for answer and return to the information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the state authorizing and permitting foreign corporations to do business therein, and having a license from the state authorities so to do; it was at all the times mentioned in the information engaged in the business of selling naptha, benzine, gasoline kerosene, lubricating oil and other products of petroleum in the
164 state of Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum, having expended many thousands of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the state of New York, for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all the times mentioned in the information was authorized to do business in this state, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the state for such purposes; at all times herein mentioned it was engaged in the business of buying and selling the products of petroleum in this state, as it was authorized to do by its articles of incorporation, * * * by the laws of the state, and by the license aforesaid.

The Waters-Pierce Oil Company is now, and at all the times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the state of Missouri, for the purpose, among others, of refining petroleum, and buying and selling the products thereof; and at all the times therein men-

tioned, was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

This respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding with either or any of the respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them,
165 or any other product of petroleum in Missouri, or to control or limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in said business of buying or selling naptha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri between the respondents or others engaged in like business, or deceive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondent or either of them, fixed or maintained the prices of naptha, benzine, gasoline, kerosene or lubricating oil, or any or either of them, or any product of petroleum sold or offered for sale by it, or either of them, in this state, nor controlled or limited the trade of said products in this state; nor prevented or destroyed competition in the purchase or sale of said products or any or either of them in this state, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust, agreement, confederation, combination or understanding.

This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the state of Missouri between the Standard Oil Company and the Waters-Pierce Oil Company. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell any of said products in this state in a territory therein lying for the most part *south* of the Missouri River, nor is any such territory by any agreement assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or understand-
166 ing, agreed not to sell, and does not sell any of said products in certain territory in Missouri, lying mostly north of the

Missouri River, nor is any such territory, by any agreement assigned to the Standard Oil Company. It is not true that the Republic Oil Company, according to any combination, confederation, agreement or understanding, had by the respondents, or any of them, sells oil in different parts of the state in territory in which by any agreement the Standard Oil Company does not sell and in which by any agreement the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agreement or otherwise through the sale of oil by the Republic Oil Company is to supply oil to such retail dealers in the state, or others who by reason of prejudice or othewrise, against the Waters-Pierce Oil Company, or the Standard Oil Company, or for any other reason, refuses to trade with either of said respondents in said alleged territory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, combination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondents in the accomplishment of the purposes of any pool, trust, agreement, confederation or understanding, to crush out competitors in the sale of petroleum, by temporarily reducing the price thereof through sales made by the said Republic Oil Company, or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the state of Missouri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of products of petroleum between the said Republic Oil Company and the Waters-Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are separate and distinct corporations, but it is not true that either makes any false pretenses to pursuing an independent business as legiti-
167 mate competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool, trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents or either of them, under and by virtue of any pool, trust, combination, agreement or understanding maintained or entered into by them, deceive and mislead the public, or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and had, at Whiting, Indiana, and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the refining of petroleum; but it is not true that by virtue of any understanding,

combination, confederation, or agreement made or entered into by respondents, or any of them, or in addition to other objects or purposes, or in addition to any other act of any respondent done in compliance with any such combination, understanding, confederation or agreement, or in the enforcement thereof, that the said Standard Oil Company has agreed to sell, or sells said products of petroleum in the state of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

168 It is not true that respondents or either of them by reason of any combination, pool, trust or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust, or understanding, has been able to control the supply, or do control and supply to the retail dealers and to the general public in the state from eighty-five to ninety per cent or any other per cent of all the naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold for general consumption in the state.

It is not true that by virtue of any pool, trust, agreement, combination, confederation or understanding entered into by respondents, or by reason of any of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents or either of them have been able to control or do control the prices of the products of petroleum in the state, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the state, or have limited the trade therein, or have driven out competition in said business.

It is not true that any combination, confederation, pool, trust, or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them or either of them have deprived or do deprive the public of free, full or wholesome competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occurring to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the products of petroleum, or by reason of any deception accom-

169 plished by respondents or otherwise that said respondents or either of them are now wilfully or unlawfully or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or controlling the prices of the products of petroleum sold in the state. It is not true, that respondents or either of them have, since the —— day of ——, 1901, and up to the present time, or at any time grossly or otherwise offended against the laws of this state, or

wilfully or flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges not granted to corporations by the laws of Missouri by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust confederation or understanding, made or maintained, the respondents are now in this state unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the state of Missouri for the said products of petroleum, or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchise granted to respondents by this state, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondents by the state, and it is not true that there is or has been by any act of respondents any injury to the public.

Wherefore respondents asks to be dismissed with costs.

170 The information herein is based upon the alleged violation of the provisions of each of sections 8965, 8966, 8967, 8968, 8971, 8972, 8978 of the Revised Statutes of Missouri, 1899, and seeks to enforce the provisions of each of said sections. Each of said sections is unconstitutional and void, for each of the following reasons:

(*a*) It violates the fourteenth amendment to the Constitution of the United States, wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws, nor make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

(*b*) It violates the provisions of Section 8, Article I, of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several states and Indian tribes, in which commerce respondent is engaged.

(*c*) It violates Section 10 of Article I of the Constitution of the United States, which provides that no state shall pass any *ex post facto* law, or law impairing the obligations of contracts.

(*d*) It violates Section 4, Article 2, of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(*e*) It violates the provisions of Section 30, Article 2, of the Constitution of the State of Missouri, providing that no persons shall be deprived of life, liberty or property without due process of law.

(*f*) It violates Section 53 of Article 4 of the Constitution of the State of Missouri, which forbids the legislature from granting to

any corporation, association or individual any special or exclusive right, privilege or immunity.

(*g*) It prohibits all barter and commerce, by prohibiting any two or more persons from agreeing upon either the present or future price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair any product of mining or any article or thing whatsoever as between themselves whether the same tends to the prejudice of the public interest or not, whether in re-
171 straint of trade, whether reasonable or unreasonable under the circumstances and limitations of such fixing of prices of said commodities, without regard to the relation of the parties to such agreement or their purposes, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*h*) It arbitrarily discriminates as between the vendors and purchasers of such articles, in that it prohibits two or more vendors from agreeing among themselves to establish a reasonable price for such articles of merchandise, but does not prohibit the purchasers from agreeing to fix a price at which they may purchase said articles, and tends to assure, and does assure, to purchasers such prices as may be established by unhealthy and ruinous competition, but does not assure to the vendors protection or the right to protect themselves, by agreement or otherwise, against ruinous rates established either by unwholesome or unhealthy competition or the combination of purchasers, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*i*) It grants special privileges to the buyers of products of the character mentioned therein, by combination or otherwise, while denying to the manufacturers or vendors of the same the right to protect themselves against such combination, or assuring themselves of the means of realizing a reasonable profit for their capital, labor and skill, and in each of such respects it violates each of the foregoing provisions of the state and federal constitutions.

(*j*) It arbitrarily discriminates between different classes of products and between labor and capital, between different kinds of insurance companies, and between different kinds of insurance, and also between different classes of persons, and in each of such respects violates each of the foregoing provisions of the state and federal constitutions.

(*k*) It applies to commodities and not to labor and other matters which may be the subject of combination, and thereby discriminates arbitrarily.

Wherefore this respondent asks to be dismissed with costs.

3. Respondent re-avers each and every allegation set forth
172 in division 2 of this return, and further respectfully shows that the informant claims that under the law of this state and the construction of its statutes the respondent in a *quo warranto* proceeding cannot attack the constitutionality of an act of the legislature, the provisions of which are invoked and sought to be enforced in said *quo warranto* proceedings, without admitting a violation of the said statute. And the informant claims that this court

has so decided in the case of The State ex inf. Crow, Attorney General v. The Firemen's Fund Insurance Company et al., 152 Mo., 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the state depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, hereby and herein invoked.

Wherefore respondent asks to be dismissed with costs.

4. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of Sections 8965, 8966, 8967, 8971, 8972, or 8978 of the Revised Statutes of Missouri, 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the fourteenth amendment to the Constitution of the United States, the provisions of which are hereby invoked.

Wherefore respondent asks to be dismissed with costs.

5. Among other things, the relief sought in this case and the penalties prescribed by Chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, is that none of the property purchased, owned, held and used by the respondent within the state of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any purpose, without incurring the penalties prescribed in section
173 8972. Upon the faith and in the reliance of the certificate granted to it by the state of Missouri to do business in the said state, as averred in the information, this respondent, long prior to the enactment of said Chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said state, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said state under the certificate as aforesaid. Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and construed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, towit: at least to the extent of 90 per cent thereof. Wherefore the respondent says that the provisions of said Section 8972 above mentioned, are in violation of Sections 4 and 30 of Article II, and Section 53 of Article IV of the Constitution of Missouri and of Section 8 of Article I of, and the fifth and fourteenth amendments to the Constitution of the United States, each and every provision of which this respondent now

hereby expressly invokes in its behalf, for that the effect of the said statute and of the enforcement thereof by granting the relief prayed by the present cause will be to deprive the respondent of its said property and its use without due process of law, to deny to this respondent the equal protection of the law, and to deprive it of life, liberty and property without due process of law, deprive respondent of the natural right to life, liberty and the enjoyment of the gains of its own industry, grant special and exclusive rights, privileges and immunities to others and interfere with respondent continuing to buy and sell products in and ship products as articles of commerce to and from foreign nations and different states. Said properties are used in the conduct of interstate commerce, so that the prohibition of the use thereof operates as a regulation of in-
174 terstate commerce and as a restraint upon commerce among the several states and territories and with the District of Columbia, within the meaning of the Act of Congress of July 2nd, 1890, which Act of Congress, by the express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by Congress by virtue of the power granted by the Federal Constitution. Said section 8972 is a part and parcel of an entire and complete system and the un-constitutionality of the above mentioned provision destroys the entire chapter, or at least the article on which this action is based.

In complying with the laws of this state and in obtaining certificates and licenses to do business therein, as mentioned and set forth in the information, respondent paid money to the State of Missouri, which *have* been held and used by the said state, and on the faith of the statutes authorizing it to do business and the licenses issued, as stated in the information, respondent invested large sums of money in the State of Missouri. The licenses and rights to do business so granted by and acquired under the laws of Missouri were without any right or reservation on the part of the state to amend, alter or repeal the same. Among other rights thereby granted by the state to the respondent was one to make any and all reasonable contracts and agreements. No other kind of a contract was ever made by this respondent. Each of the provisions of Section- 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised Statutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the provisions of Section 10 of Article I of the Constitution of the United States are violated.

Wherefore respondent asks to be dismissed with costs.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for said Respondent.

175 And afterwards, to-wit, on the 22nd day of February 1907, the further following proceedings were had in said cause, viz:

STATE ex Inf. Attorney General, Informant,
vs.
STANDARD OIL Co. et al., Respondents.

Now at this day, it is ordered by the court in this cause, that Judge Robert A. Anthony, Special Commissioner herein, after taking the testimony in this cause, shall make special findings as to the law as well as the facts, upon each issue tendered to him by the respective parties, and state his conclusions of law in his final report. Exceptions to the findings of fact and law so made by said special commissioner to be filed by either party so desiring within ten days after the filing of the commissioner's report and findings.

And afterwards, to-wit, on May 24th, 1907, the report of the commissioner was filed in this Court.

Which said report is in words and figures as follows, to-wit:

176 In the Supreme Court of Missouri, Court en Banc, April Term, 1907.

No. 12988.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Report of Robert A. Anthony, Special Commissioner.

Comes Robert A. Anthony, Special Commissioner, appointed by the court to take the testimony upon the issues joined in this cause, with power and authority to issue subpœnas, compelling the attendance of witnesses, the production of papers, books and documents, and to issue attachments therefor, to hear and determine all objections to testimony and to admit or exclude the same, to report the testimony with his findings of facts to this court; and in compliance with the directions of said order reports to the court as follows:

177 On May 13th, 1905, the undersigned Commissioner, duly qualified as such commissioner, by taking oath before G. B. Cook, clerk of the circuit court of Madison county, Missouri, to faithfully and fairly hear and examine this cause, make a just, impartial and true report, and faithfully comply with the order of the court, which oath is herewith returned with this report.

The great bulk of the oral testimony was taken in short hand by Hugh D. Muir, Esq., of Sedalia, Missouri, a very competent and accurate stenographer, which was afterwards transcribed by him and is herewith returned in two volumes marked "Typewritten Record of Testimony," Volume I. including Pages 1 to 1,403, and Volume

II. Pages 1,404 to 2,705. There is also set out in full in the "Typewritten Record of Testimony" all exhibits offered during the trial, petitions for production of books, papers, letters, records, etc., and returns thereto, except Exhibits "A," map showing division line in Missouri, "D3" to "H3" inclusive, schedules of prices, and "R3," minutes of meetings of stockholders and directors of Waters-Pierce Oil Company, which exhibits are herewith returned and filed with this report. At the request of counsel for both informant and respondents depositions taken in New York City, Ohio, Iowa and Oklahoma are set out in full in the "Printed Record of the Testimony."

Counsel for respondents had printed the oral testimony, depositions, exhibits and pleadings, and requested that same be returned to the court, which, after making proof of its correctness, is accordingly done. This is returned in three volumes and is marked "Printed Record of the Testimony." The corresponding pages of the "Typewritten Record of Testimony" are carried on the margins of the "Printed Record of the Testimony," except the depositions taken in New York City, Ohio, Iowa and Oklahoma, where the corresponding pages of the depositions are carried on the mar-
178 gins. The "Printed Record of the Testimony" is an exact copy of the oral testimony taken by Mr. Muir, the exhibits (not embracing those above excepted), the depositions taken in New York City, Ohio, Iowa and Oklahoma, as well as all pleadings, petitions for orders, orders and other matters which occurred during the taking of testimony.

Unless otherwise stated the references made in this report are to the top pages of the "Printed Record of the Testimony." A reference to those pages will give the paging of the "Typewritten Record of Testimony" or the paging of the deposition where the same testimony will be found.

There will first be given a brief outline or abstract of the testimony of witnesses and the documentary exhibits with proper reference to pages of the "Printed Record of the Testimony" where the testimony in full may be found.

Abstract of the testimony of witnesses and documentary evidence offered.

A. L. Stocke.

(Pages 53 to 95 Inclusive.)

A. L. Stocke testified in substance as follows: Lives in St. Louis and his business is that of Secretary of St. Louis Oil Company, a corporation located in St. Louis and selling both refined and lubricating oils. Says he first began his connection with the oil business in 1878 and continued with same company up to present time. He classes illuminating oils into standard white, prime white, water white and headlight. Says the quality varies by the fire and gravity tests. Lubricating oils are determined according to color and vicosity and gravity tests. Each company has its own name for different

grades of oils. There is more illuminating oil sold than lubricating oil.

179 Says his company has three solicitors on the road selling oils besides himself. He does all kinds of work connected with his company. Says he sells in Missouri, Southern Illinois, Arkansas and sometimes in Indian Territory. He has personal charge of his trade and is familiar with the business.

Says he knows the Waters-Pierce Oil Company, knows Mr. Ackert, the local manager, and Mr. H. Clay Pierce. His understanding that Pierce is the president of that company. The Waters-Pierce Oil Company was in business before his company was. The Standard Oil Company has had no plant in this city (St. Louis) since his company has been doing business. That company has done no business in St. Louis since he has been here. Some years ago that company had a plant in East St. Louis, and it may be there now. Says that some eight or nine years ago he tried to buy oil from the Standard plant in East St. Louis, but they refused to sell him.

Says his company purchases all its oil from independent refineries in Pennsylvania and Ohio, and that it is shipped in tank cars. This oil comes to his company from the East and is then distributed around through his territory.

The Waters-Pierce Oil Company also has a tank station in East St. Louis and it sells oil there.

Says he sells in Hannibal, Missouri, and meets the Standard Oil Company there. Also sells in Jefferson City and meets the Waters-Pierce Oil Company there, but has never met the two companies selling oil in the same place.

Says the Union Tank Line Company cars are cars made for shipping oil in bulk.

Schofield, Schurmer & Teagel was a firm in the oil business here when he begun business. It was a competing company with the Waters-Pierce Oil Company and with his company. As a competitor it was more friendly with his company than with Waters-Pierce Oil Company. In 1901 Schofield, Schurmer & Teagel

180 was bought out by the Republic Oil Company, and then the relations between his company and the Republic were changed. Says the Republic was not friendly, but made "terrible drives" at his business, soliciting the business that the Waters-Pierce could not take away.

Witness says that neither the Republic Oil Company nor the Waters-Pierce Oil Company solicit the business of the other. When the Republic began business it began to get oil in Union Tank Line cars. The Waters-Pierce Oil Company got their oil in these cars and in their own cars. Says also that Waters-Pierce Oil Company has pipes across the river which gives them an advantage of from $15.00 to $20.00 a car.

Says that his company never got oil in Union Tank Line cars.

His company sells oil in all states where the freight rates will permit.

That his company is independent and has always been a competitor of the Waters-Pierce Oil Company.

He gets prices, or fixes prices, by cards sent out by the Waters-Pierce Oil Company. Says that in 1895 his company opened its plant which they maintain in the city. Oil was then selling for twelve cents per gallon and by reason of competition with the Waters-Pierce it got as low as three and a half cents. This was in 1896 or 1897. In 1896 or 1897 he had a talk with H. Clay Pierce, who was then president of the company. This was when the price was so low. He wanted to do something to better the conditions and had an agreement he wanted to make. He wanted us to sell exclusively in the Waters-Pierce territory, but witness refused to make any kind of agreement.

The Waters-Pierce and Republic do a majority of the business in St. Louis. The Waters-Pierce has its station at 13th and Gratiot Streets in this city and there has been no change since 1895,
181 except by way of improvement. They did business in 1897 under the same name they are doing business under now.

In 1901 his company was running eight or nine wagons. His trade in the city is with retail dealers, manufacturers and consumers of every description except to families. His illuminating oil and gasoline are delivered by tank wagons. The lubricating oils are sold in barrels and packages. His drivers for the last four years have also been solicitors and he does soliciting himself. He has supervision of the tank wagon deliveries. The Republic Oil Company, he thinks, run four wagons.

Says the information that the Republic and Waters-Pierce Oil Companies did not solicit the trade of each other came from his drivers of tank wagons and from interviews with customers.

Since Republic began business he thinks the Waters-Pierce Oil Company operated about twenty-five tank wagons in the city.

Says his company is now running eleven wagons. Has tankage capacity for three hundred thousand gallons of refined oil and about twenty thousand gallons of lubricating oil. In 1895 when he started in business his capacity was about one hundred thousand gallons.

Witness A. L. Stocke identifies a number of postal cards sent out by the Waters-Pierce Oil Company, giving quotations on the prices of coal oil, gasoline and naptha, on the following dates: Feb. 6, 1905, Dec. 19, 1898, Jan. 9, 1905, Jan. 17, 1899, April 19, 1905, June 12, 1905, Sept. 28, 1903, Nov. 27, 1899, Sept. 8, 1899, Sept. 4, 1899, Nov. 28, 1898, Jan. 17, 1899, March 13, 1899, Feb 6, 1905, Jan. 9, 1905, being exhibits "B" to "P" inclusive, and found on pages 290 to 295.

182 *H. J. Cohn.*

(Pages 96 to 178 Inclusive.)

H. J. Cohn testified in substance that he now works for George P. Jones & Co., an independent dealer in illuminating and lubricating oils, located in the City of St. Louis. He is a traveling salesman for that firm, and sells oils mostly in the territory in Missouri where the Waters-Pierce Oil Co. sells. He has been connected in the oil busi-

ness for the past thirteen or fourteen years, and is now twenty-nine years old. He began work for the Waters-Pierce Oil Co. as an office boy at Marshall, Texas; afterwards he was assigned to keep records of iron barrels; then became utility man; then a relief agent; and was then made a salesman for by-products for about a year. He was brought to Missouri and connected with the Missouri Division in February, 1900, and was made salesman and auditor for the Missouri division. By the Missouri division he means the territory in Missouri in which the Waters-Pierce Oil Co. sold oil. His duties were to check up stations and sell goods, to take stock of local agents, and to see that the stock and money was right. He worked for the Waters-Pierce Oil Co. in Missouri, until the fall of 1902, and says that as such salesman and auditor he became familiar with its business and manner of doing business in Missouri.

The witness explains a map of the State of Missouri offered in evidence, indicating thereon a line dividing a territory between the Waters-Pierce and Standard Oil Companies. The Waters-Pierce did not sell in the Standard Oil territory, nor did the Standard sell in the Waters-Pierce territory.

During the time he worked for the Waters-Pierce Oil Co. it obtained its oils from the Standard Oil Co., from Whiting, Indiana, and which came in Union Tank Line cars. Says he did not
183 get oil from any other oil company while he was with them. Schofield, Schurmer & Teagle were in business for about a year in the Waters-Pierce territory after he began to work for them. This firm was succeeded by the Republic Oil Company, and the tank station of Schofield, Shurmer & Teagle was removed from Springfield shortly after the Republic succeeded them.

During the time he worked for the Waters-Pierce Co., C. M. Ackert was manager of the Missouri division. Finlay or Pierce was president, J. P. Gruett was treasurer, and C. M. Adams was secretary. Says that Mr. Ackert, manager of the Missouri division, told him at one time that Stein, the Standard Oil auditor, checked up the account of the Waters-Pierce Oil Co. in St. Louis.

The Republic Oil Co. was not very aggressive as a competitor and they quit doing business at Springfield. They were doing business in the Waters-Pierce territory out of St. Louis. The Republic sold oil in the name of palacine.

When he began working for the Waters-Pierce Oil Co. he received instructions as to their territory and the Standard Oil territory, and was told not to sell oil in the Standard territory. Orders received from parties in the Standard Oil territory were not filled by the Waters-Pierce Oil Co.

Says he heard of a break over the line at Linn Creek by a Standard agent, and Mr. Adams assured him it would not happen again.

At one time when he reported that the Republic was under-selling the Waters-Pierce Oil Co. to Mr. Ackert, he was told that he need not fear further lower prices.

The Waters-Pierce Oil Co. did not sell oil across the Mississippi in Illinois, but it did sell in Arkansas. The Waters-Pierce had a system by which they got information of shipments of oil into their terrtiory

by independent companies. This information was furnished to the witness while he was on the road as auditor and salesman.

184 Many of the agents of the Waters-Pierce Oil Co. were also railroad station agents. In the territory he now sells in for George P. Jones & Co., the Waters-Pierce Oil Co., the St. Louis Oil Company and J. D. Street & Company also sell. Street & Company, however, sell only lubricating oils. George P. Jones & Co. get their oils from independent refineries in Pennsylvania and Ohio. That he quit the service of the Waters-Pierce Oil Co. in the fall of 1902. He estimates that the Waters-Pierce Oil Co. was selling in the Missouri territory covered by it, from 85 to 90 per cent of all the oils. The prices at which the Waters-Pierce Oil Co. sold, varied at different points, caused by competition and different freight rates. These variations ranged from one to three cents per gallon. When he quit the service of the Waters-Pierce Oil Co. competition was less than when he begun, owing, he says, to the fact that Schofield, Schurmer & Teagle had gone out of business. In order to get the business where there was competition the Waters-Pierce Oil Co. would reduce prices, and they got it in most instances.

Some merchants were prejudiced against the Waters-Pierce Oil Co. and would not buy from them at any price.

The only tank stations now maintained in the Waters-Pierce territory by other companies are at Springfield and Joplin, where Wilhoit has stations, and other companies maintain stations in St. Louis.

There has recently been large discoveries of oil wells, but this has not affected the prices.

Says the Waters-Pierce salesmen tell his customers of goods he sells them before they reach the customer.

He was instructed as to competitive shipments, to go see the parties to whom they were shipped, get the prices and who made the shipment, and get the business back again. At one time he was instructed to tell the Desloge people at Desloge, Missouri, who had

185 bought oil from independent companies, that the oil was Waters-Pierce oil, and that the Waters-Pierce Oil Company could sell it cheaper. He afterwards found out that the oil was not Waters-Pierce oil. It was his custom to tell customers every day such things as these.

The Standard Oil Company sometimes sold oil in the Waters-Pierce territory, but billed by the Waters-Pierce Company. A complete record of all the outside shipments into the Waters-Pierce territory was kept, and when such shipments were made, they were charged up against the agent who had charge of that place, and his attention called to the shipment.

The trade products of petroleum are, gasoline, naptha, coal oil, parafin wax and various other by-products. Of the oil sold, illuminating oils amount to about 65 per cent and lubricating oils to about 35 per cent.

There is a great deal more competition in the sale of lubricating oils than in the sale of illuminating oils, because lubricating oils are usually sold direct to the consumer, while illuminating oils are sold to the merchant and retailers.

While he was with the Waters-Pierce Oil Company most of the oils came from the East, and while the Texas oil fields were in existence during that time, he does not know that any oils came from that field.

Says that he came to Missouri and began work with the Waters-Pierce Co. Feb. 1, 1900, and worked for them continuously in that territory until Oct. 1, 1902.

If this investigation is successful, that is, if the Waters-Pierce Oil Company should be ousted from Missouri, his company will suffer by it, for the reason that his company is the only competitor of the Waters-Pierce that amounts to anything, and in case of ousting the Waters-Pierce there will be more competition.

He won't tell how much oil George P. Jones & Co. sell, because he don't want the Waters-Pierce Oil Company to know.

186 He gave General Hadley a statement beforehand of what he knew.

Now says that the Waters-Pierce Oil Company tried to injure his reputation since he quit them, and also states that the ousting of that company would enable him to make a very nice living. He places this statement on the ground that he could do so because he is the best salesman in St. Louis and could better hold his own among competitors.

In order to compete with the Waters-Pierce, a man must know their weaknesses before he can overcome the restrictions which they have placed around the independent dealers. Says that George P. Jones & Company have no tank stations in Missouri nor outside and they receive their oil in wood barrels.

This company buys from independent companies in Pennsylvania and Ohio.

Occasionally his company got oil from the Republic Oil Co. in St. Louis, and sometimes lubricating oils from the Waters-Pierce, in order to "fill in" when his company run short.

Says that he expressed a wish that his company would not buy oil from the Standard Oil Company or Waters-Pierce Oil Company or any of the allied companies of the Standard. Says that a tank station is a place where large tanks are prepared to receive oil out of tank cars, and from these tanks the oil is drawn out into tank wagons and distributed by the drivers to the customers.

Illuminating oils were usually distributed to merchants and other retail dealers, while lubricating oils were usually distributed to the consumer.

He says that a tank car usually holds about 6,000 gallons. While he was with the Waters-Pierce Oil Company his work was not in the City of St. Louis, but outside in the State of Missouri.

He further explains that rural routes are sometimes estab-

187 lished from tank stations, where a driver goes into the country, or adjacent country towns and delivers oils. While he was working for the Waters-Pierce a man by the name of Wilhoit had a tank station at Joplin. That the Waters-Pierce had a great many tank stations at various towns throughout the Missouri territory.

There was a tank station at Desoto, Piedmont, Poplar Bluff, Joplin, Springfield, Webb City and many other places. He says that tank stations or warehouses were erected by the Waters-Pierce Oil Company wherever the town was large enough to justify, and customers were supplied from these sources.

Its largest sales of oil were made from tank stations. Says that as agent and auditor of the Waters-Pierce Oil Co., he audited the accounts of agents all over the Missouri territory and sometimes sold oils. Especially was it his duty to visit customers who were dissatisfied and try to bring them back to the Waters-Pierce. He says that oils are higher when sold in wood barrels than when sold in iron barrels.

He says that no other company except the Waters-Pierce, outside of St. Louis, Joplin and Springfield, have tank stations or own or operate tank wagons, or use milk cans or iron barrels, unless it be Mr. Lohman at Jefferson City.

Says the Waters-Pierce Oil Company has no tank station outside of its own territory.

There were two other men, Sutton and Chamberlain, who sold for the Waters-Pierce Oil Company at the same time he did, and in the same territory. They made the smaller towns, did some checking and auditing, and did more soliciting than he.

He gives the names of quite a number of companies competing with the Waters-Pierce Oil Company in the sale of lubricating oils.

Says there was more or less competition in every town in lubricating oils, but very little competition in the sale of illuminating oil.

188 The Waters-Pierce Oil Company did a very much larger business in the sale of illuminating oils than it did in the sale of lubricating oils.

The only companies dealing in illuminating oils, outside the City of St. Louis, were St. Louis Oil Company and Wilhoit, during the time he was with the Waters-Pierce Oil Company.

The rule was, when he was with the Waters-Pierce Oil Company, that he found no competition along the line in the sale of illuminating oils.

Oils shipped in iron barrels were classed with fourth class freight and wood barrels were classed third class freight, which made the freight on the wood barrels higher. Says that he thinks that if there was more competition in the oil business there would be a decline in prices. That prices are less in towns and cities where the Waters-Pierce has competition.

Maywood Maxon.

(Pages 178 to 231 Inclusive.)

Maywood Maxon testified in substance as follows:

He now lives at Decatur, Illinois, and is forty-nine years old.

He has been in the oil business since he was eighteen. He began his connection with the oil business with Cochran-Lymans &

Co., of Cincinnati, Ohio. This was an oil company. He was promoted shortly after going into this company, became shipping clerk, and afterwards traveling salesman. This company sold oils of the Standard Oil Company, and Alex McDonald was a partner in it.

He, Alex McDonald, was also president of the Consolidated Tank Line Company, and later, president of the Standard Oil Company of Kentucky, and a member of the Executive Committee of the Standard Oil Company of New Jersey.

189 This latter company has its offices at No. 26 Broadway, New York, and the Standard Oil Company of Kentucky had a representative at 26 Broadway, New York, a vice-president. He stayed with Cochran-Lymans & Co. until the spring of 1880, then went with the Peoria Tank Line Company at Peoria, Ill.

The firm of Alex McDonald & Company were owners of this company. Had handled the Standard oils and he was traveling salesman for it.

Afterwards he became manager of the Iowa Tank Line Company, at Davenport, Iowa.

This company sold the oils of the Standard Oil Company solely.

This was in 1883, and McDonald was one of the principal owners of this company.

This company was absorbed and sold out to the Cumberland Tank Line Company in 1884, and he became the manager of that company.

It done business in Missouri, and had its general offices in this State at Hannibal, and a tank station at Kansas City.

A man by the name of Swain was in charge of the business of this company at Kansas City, and a man by the name of Drake was also connected with it.

Alex McDonald was president of the Consolidated Tank Line Company in 1884.

This company continued to do business in Missouri until 1892, when it was succeeded by the Standard Oil Company of Indiana.

The Consolidated Tank Line Company in Illinois, Indiana and Ohio was taken over by the Standard Oil Company of Kentucky, and Alex McDonald became president of this company.

At this time, the witness, in 1892, became connected with the Standard Oil Company of Kentucky.

190 Mr. L. J. Drake was the original owner of the Iowa Tank Line Co., and when later the company was taken over by the Consolidated Tank Line Company, Drake became general manager. When the Consolidated Tank Line Company went out of business in 1892, Drake became the general manager of the Standard Oil Company of Indiana, and is still connected with that company.

When witness went with the Standard Oil Company of Kentucky, in 1892, he took a position in Illinois and there he came in contact with the Waters-Pierce Oil Company.

The latter company sold in East St. Louis and Belleville. He ceased his connection with the Standard Oil Company in May, 1894.

He knew the firm of Schofield, Shurmer & Teagle, and also the Republic Oil Company.

During the year 1902, somewhere during the months of November or December, by direction of Mr. C. T. Collings, vice-president of the Standard Oil Company of Kentucky, the witness went to see Mr. Finlay at St. Louis, the president of the Waters-Pierce Oil Company, to talk over with him the territorial lines in Illinois between the Standard Oil Co. of Kentucky and the Waters-Pierce Oil Company.

The Republic Oil Company was also involved.

Says the Republic Oil Company had been selling oil in his territory in Illinois.

During the course of his conversation with Mr. Finlay in the offices of the Waters-Pierce Oil Company in St. Louis, witness says: "I made a remark to Mr. Finlay, that I could not understand why the Republic Oil Company, a friendly interest to Standard Oil and Waters-Pierce, should name the prices they were naming in Illinois, after Mr. Collings had explained to me that they were in business and being operated for the purpose of securing trade that was antagonistic to the regular oil interests." Mr. Finlay replied that I was certainly mistaken in regard to the prices that I named, for the manager of the Republic Oil Company reported to him regularly, and he fixed the prices that the Republic Oil Company made."

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The Republic was selling oil in Illinois at this time, and getting its oils from St. Louis.

Says that his company, the Standard Oil Company of Kentucky, reported to 26 Broadway, New York.

Mr. Drake had office No. 1002 at 26 Broadway, and he was president or vice-president of the Standard Oil Company of Indiana.

During the years 1901 and 1902 Mr. Drake had offices at Chicago with the Standard Oil Company of Indiana.

The oils handled by the Standard Oil Company of Kentucky and Illinois came mostly from the Standard Oil Company at Whiting, Indiana, where a refinery was operated by the Standard Oil Company of Indiana.

Mr. Drake, at 26 Broadway, looked after the Standard Oil interests of Indiana and was a member of some committee. This was L. J. Drake.

The Standard Oil Company of Kentucky also had an office at 26 Broadway, New York.

Says he knew Mr. Stein, who was traveling auditor for the Standard Oil Company, under Wade Hampton, chief auditor of Standard Oil interests.

Cross-examination:

Witness says he is president of the Standard Oil Company of Illinois, which was organized and is operated as an exploration company; that is, it is doing no commercial business, but takes and holds leases and prospects for oil.

Says he has not a friendly feeling for the Standard Oil Co. of Kentucky, because he considers that they did not treat him right.

The Peoria Tank Line Company got all its oils from the Standard Oil Company of Ohio.

Alex McDonald was president of this company.

192 Witness made reports to J. R. White, general manager, and some to Silas H. Payne of Cleveland, Ohio.

James McDonald is general manager of the European interests of the Standard Oil Company.

The Iowa Tank Line Company got its oils from the Standard Oil Company of Ohio.

Up to the year 1887 the Consolidated Tank Line Company got its oils mostly from the Standard Oil Company of Ohio.

Says he first went to Decatur, Illinois, with the Consolidated Tank Line Company, and then remained with the Standard Oil Company of Kentucky, when it bought out the former company in 1892.

Alex McDonald was the first president of the Standard Oil Company of Kentucky.

He was afterwards succeeded by C. M. Pratt.

Mr. Pratt was president of the Standard Oil Company as late as last year.

Says that upon his visit to St. Louis to see Mr. Finlay, and after a short talk with him, Mr. Ackert and another gentleman came in and they talked over in a general way the territorial lines in Illinois between the Waters-Pierce Oil Company and the Standard Oil Company of Kentucky. They did not come to an understanding, and finally agreed that the matters would have to be referred to New York. Says Mr. Drake, vice-president of the Standard Oil Company of Indiana, was at one time general manager of the Consolidated Tank Line Company.

George U. Hendricks.

(Pages 232 to 288 Inclusive.)

Lives in St. Louis and is now clerk at the City Hall in the street department. Lived in St. Louis all his life.

He is acquainted with Mr. Finlay and points him out in the court house.

193 He begun work for the Waters-Pierce Oil Company in 1880 at the age of 12 years, begun as a messenger, in which capacity he worked for about three and one-half years, and then he went into the sales department in St. Louis. William H. Waters was president when he first went to work for the company in 1880, afterwards H. Clay Pierce became president.

He went into Mr. Pierce's office when he was vice-president. He filled the various positions of mail clerk, office boy, clerk in freight department, change of routing and checking freight bills.

After Mr. Pierce became president he continued in that position until about 1900 or 1901. The company reincorporated in this

state in 1900 on account of some Texas troubles. Says he continued to work for the company until October 31st, 1904.

When new company was incorporated in 1900 there was no change in place of business. The same offices were maintained, same stationery was used, same brands of oil were sold, and same tank stations were maintained. The property of the old company was taken over and used by the new company. With a few exceptions the same officers and same employees were retained.

The brands of the Waters-Pierce Oil Company were eupion, prime white and refined oil and they used wood and iron barrels. (It is here admitted by counsel.)

The refined oils of the Waters-Pierce Oil Company came principally from Whiting, Indiana, both before and after the incorporation of the company in 1900.

Both before and after the new company was incorporated oils were shipped in Union Tank Line cars. W. P. O. cars were also used. These were cars belonging to the company. The new company sold in the same territory as the old and there was no change in the traveling men. The stationery, letter heads, bill heads, etc., were the same before and after May 29th, 1900, except they were stamped "Incorporated May 29th, 1900." The banking was done at the same place and the same attorney was employed.

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Prior to May, 1900, reports were made from the St. Louis office of the Waters-Pierce Oil Company to Howard Page at 26 Broadway of the outgoing business. After May 29th, 1900, these reports were made to R. H. McNall, commercial agent of Waters-Pierce Oil Company, located at 26 Broadway.

In August, 1904, Mr. Andrew M. Finlay became vice-president.

The reports made to 26 Broadway were the same in form before and after May 29th, 1900; 26 Broadway is a building in New York known as Standard Oil Building.

He identifies map of state offered in evidence showing territory in which Waters-Pierce Oil Company sold oil and in which the Standard Oil Company of Indiana sold oil and says that it is correct.

Says that orders received by Standard Oil Company from persons living in Waters-Pierce territory were sent to Waters-Pierce Oil Company and filled by it, and that orders received by it from Standard territory were sent to the Standard Oil Company to be filled. This was of weekly occurrence.

He often consulted the map kept in the office of the Waters-Pierce Oil Company to find out in what territory a place was located in order to determine where to send the order. There was a division line drawn on this map with a blue pencil and the same map was used before and after May 29th, 1900.

The Union Tank Line cars are made for transporting oil in bulk and contain on an average about 5,000 gallons.

A man by name of Stein, an auditor of the Standard Oil Company, checked up the books of the Waters-Pierce Oil Company and

so did one Baccus, who also was a Standard Oil auditor, and
195 who came with the Waters-Pierce about the time Tinsley came.

The correspondence from 26 Broadway, New York, showed signatures of other men in the building, as coming from their departments. He saw such signatures on letters relating to rates and tonnage. The initials "H. E. F." were on some of the letters and stood for H. E. Felton who was with Mr. Page. Says he heard conversations between Felton and Finlay concerning freight arrangements and saw correspondence with 26 Broadway concerning the same matters.

Where there was no tank station, shipments of oils into the territory were made in barrels.

The Waters-Pierce Oil Company used its own cars mostly when distributing oils in its territory, but most of the oils shipped to it from the refineries came in Union Tank Line cars. Cars from the East were usually unloaded in East St. Louis and piped over.

The reports to Howard Page at 26 Broadway gave a record of all carloads shipped from St. Louis to Missouri territory and also included the package shipments.

When an auditor from the East came to audit the accounts it was general talk in the office that he was a Standard Oil auditor. Baccus, a Standard Oil auditor, audited the books early in 1904, and became connected with the Waters-Pierce Oil Company in the fall of 1904.

He knew before hand that Standard Oil auditors were coming to audit the accounts by letters that came from 26 Broadway, and he also heard Pierce, Finlay and Ackert say they were coming. During the time he was with the company these auditors from 26 Broadway came once a year and audited the accounts of Waters-Pierce Oil Company.

196 *Charles F. Hatfield.*

(Pages 296 to 314 Inclusive.)

Is now National Secretary of Woodmen's Modern Protective Association. He lives in St. Louis.

Prior to November, 1904, he worked for Waters-Pierce Oil Co. as freight claim agent in the St. Louis office. He resigned his position with the company because he could make more money at something else. He was with the company in same position since 1890.

He first met H. Clay Pierce in Cleveland, Ohio. He was then private secretary for Colonel Thompson, who was afterwards vice-president of Standard Oil Company of Ohio. He was afterwards with Colonel Thompson as his private secretary at 26 Broadway, New York. This place is usually known as Standard Oil Company headquarters. While there he learned that one Stein was a traveling auditor of the Standard Oil Company. Says he left New York in 1889.

Between 1886 and 1889 there was some correspondence between

Colonel Thompson and Waters-Pierce Oil Company relative to trade territory. Says he saw a map at 26 Broadway showing division of trade territory in Missouri.

His work with Waters-Pierce Oil Company in St. Louis began June 1st, 1890, and ended November 1st, 1904.

Says he saw a similar map to the one at 26 Broadway in the Waters-Pierce offices in St. Louis, showing division of trade territory. The map at 26 Broadway was sent there for Colonel Thompson to decide a point in difference between the Waters-Pierce Oil Company and the Consolidated Tank Line Company. Thompson was a director in both companies and what he said about such questions settled the matter. The map he saw at 26 Broadway was sent to the Waters-Pierce Oil Company at St. Louis. The one he saw at St. Louis looked like the same one he saw in New York. It was a Rand-McNally map and had a zig zag line across it.

197 *Edward Von Harten.*

(Page- 314 to 324 Inclusive.)

Lives in St. Louis and has lived there since 1891. He is now with the Southwestern Oil Company, a company located in St. Louis, which was organized in March, 1905. It is an independent company. H. C. Jungling and Charles M. Polk are associated with him.

He became connected with the Waters-Pierce Oil Company in 1883 at Houston, Texas, as local agent. In 1884 he went to Little Rock, Arkansas, as manager of the state and stayed there until 1891. Neither the Standard Oil Company of any place, nor the Consolidated Tank Line Company sold oils in Texas or Arkansas while he was there.

In 1891 he went to St. Louis with Waters-Pierce Oil Company, and had charge of the city sales of refined oils, that is, naptha and burning oils. He had three or four salesmen under him and looked after all the sales in the city. The company had a tank station in St Louis, also one at Carondelet, East St. Louis, Granite City and Webster. The Standard Oil Company, though he does not know which one, has a tank station in East St. Louis. He continued with Waters-Pierce Oil Company until December 31st, 1904, in the same position. During this time the Standard Oil Company did not sell oil in St. Louis to the trade. Some of the oils of Waters-Pierce came from Whiting, Indiana, but he does not know much about where the oils came from because he had nothing to do with the buying. During his time with Waters-Pierce Oil Company illuminating oils were sold by Schofield, Shurmer & Teagle, International Oil Works and St. Louis Oil Company in tank wagons. These companies were all competitors. The International afterwards became passive so far as competition was concerned. After the Republic Oil Com-
198 pany succeeded Schofield, Shurmer & Teagle the Waters-Pierce Oil Company still tried to get the business of the Re-

public. Says the International Oil Works made reports to the Waters-Pierce Oil Company.

The Waters-Pierce Oil Company and the International Oil Works together sold about 85 per cent of illuminating oils in the City of St. Louis. The St. Louis Oil Company and the Republic Oil Company done about the same amount of business, with a little advantage in favor of the Republic Oil Company.

H. C. Jungbug.

(Pages 324 to 329 Inclusive.)

Lives in St. Louis. Begun working for the International Oil Works in St. Louis in 1890—worked for them about a month and a half and then began work for the Waters-Pierce Oil Company and worked for that company as city salesman in St. Louis until April, 1905. During this time oil was also sold in the city by Schofield, Shurmer & Teagle, St. Louis Oil Company and International Oil Works. His business was to sell oil and to see customers, and to see that the tank wagon drivers were doing their duty and properly serving the customers. He made reports to the city manager of the business. He sometimes gave rebates as against the other companies.

The Republic Oil Company succeeded to the business of Schofield, Shurmer & Teagle in 1901. Says he gave rebates to one customer of the Republic. When the Republic gave concessions to a customer they met them, but he says this happened only once. It was not a frequent practice to give rebates to customers of Schofield, Shurmer & Teagle, but when they wanted their customers they went after them. Says he had instructions to get business of St. Louis Oil Company by giving rebates. Had some instructions as to Schofield, Shur-
199 mer & Teagle. These rebates were paid at the end of each month. Says he had no instructions to give rebates to customers of Republic Oil Company.

Says on cross-examination that he gave rebates to one customer of the Republic Oil Company. This was a large dealer who was buying from three companies. Says he solicited the customers of Republic Oil Company the same as others, but was not told to make any concessions to get their business. Says he tried to get business away from all other companies, including the Republic.

Says he never gave rebates, or made concessions unless he was told to do so. When he gave rebates to customers he got their business.

L. C. Lohman.

(Pages 330 to 363 Inclusive.)

Lives at Jefferson City, Mo., has resided there for fifty-four years and is a merchant there doing a general business. As such merchant he handled kerosine and gasoline oils and bought and sold such oils as a jobber. For about two years past the Waters-Pierce

Oil Company has been selling all the oils in Jefferson City. At different times during the last thirty years he has sold oils in opposition to the Waters-Pierce Oil Company in Jefferson City.

Says he knew the firm of Schofield, Shurmer & Teagle and done some business with them and this firm done business in Jefferson City. The Republic Oil Company has never done business in Jefferson City. Standard Oil Company never done business in Jefferson City. He wrote to the Standard Oil Company once and they gave him quotations, but refused to sell him because that was Waters-Pierce territory. He wrote to them at Cleveland, Ohio. The replies to his letters are lost and he cannot find them. This was a long time ago, fully twelve years ago. The Waters-Pierce was then selling in Jefferson City and has continued to sell ever since.

200 He at various times bought from the Waters-Pierce Oil Company and sometimes bought their oil from jobbers and druggists from whom he could get it cheaper. This oil he bought in this way he sold in opposition to the Waters-Pierce Oil Company. He also bought oils from other companies, Schofield, Shurmer & Teagle, St. Louis Oil Company and some companies in Ohio.

His oils were shipped to him originally in wood barrels and when the rates were made less on iron barrels he had some of these made. Later he had oil shipped in tank cars and filled his barrels from them until the railroads refused to ship to him in tank cars unless he would build tanks to store the oil in.

When he was buying oils from the Waters-Pierce Oil Company, auditors came to check up his accounts about once a year.

In about 1896 or 1897, when he was representing an independent company, he sold oil as low as seven cents a gallon. When he would get a car of oil and it reached East St. Louis, the Waters-Pierce Oil Company would put the price down and keep it down until his car was sold out.

Sedalia is 64 miles from Jefferson City.

Says he got the last oil from independent dealers or refineries in about 1896. Since that date no other company except the Waters-Pierce Oil Company has sold oil in Jefferson City.

(Page 354.)

Letter introduced from A. A. Lasar, manager of Waters-Pierce Oil Company at St. Louis, to Mr. Geo. S. Tyler, agent, C. & A. Ry. Co., St. Louis, dated Sept. 20, 1897, complaining that this road had permitted a competitor at Jefferson City to receive shipments over this road and fill packages on switch at Cedar City, after he had been refused such shipments by M. K. & T. Ry. and Mo. Pac. Ry.

201 (Page 355.)

Also, a letter from A. M. Finlay, vice-president of Waters-Pierce Oil Company, to Geo. S. Tyler, A. G. F. A., C. & A. Ry., St. Louis, Mo., dated October 15th, 1897, complaining of shipments of tank cars of oil consigned to Cedar City and quoting a rule in "Tank Line

Hand Guage Book No. 3," reading as follows: "Petroleum and its products in tank cars will be delivered only when consigned to parties at points at which they have proper unloading and storage facilities, and when shipments in tank cars are sent to parties who have not such facilities, the shipments will be returned to shippers at their risk and expense."

Says he thinks Schofield, Shurmer & Teagle done no business in Jefferson City after 1897.

The rate war when oil went down to seven cents a gallon was between him and Waters-Pierce Oil Company and continued through 1896 and part of 1897.

When he wrote to the Standard Oil Company at Cleveland, Ohio, about twelve years ago for quotations on prices, they quoted him oil at about two cents less on the gallon than he was getting it from the Waters-Pierce.

J. S. Willis.

(Pages 363 to 378, Inclusive.)

Resides at Jefferson City, Mo., and is rate clerk of the Missouri Railroad and Warehouse Commission. Has held that position since June 25th, 1903. His business as such rate clerk is "To keep a record of the tariffs filed with the Commission by the railroads and to check those tariffs to see that they do not exceed the statutory limitation." The schedules of the different railroads are filed with the Commission and he checks up such schedules to see that they comply with the law. Says he is familiar with the rate records and knows how to find the rate from one point to another. Also
202 he knows the distances from one point to another from the printed distance tables filed with the Commission. Says he has prepared and has with him a memorandum or tabulated sheet made from the records in his office showing distances and freight rates from Kansas City and St. Louis to various points. Says that oils shipped in less than carload lots is fourth class and carload lots fifth class, when there is no special commodity rate published less than fifth class. Prior to April 1st, 1905, oil shipped in wood barrels went as third class and paid a higher freight rate than oil in iron barrels which was carried as fifth class freight. On April 1st, 1905, the Commission placed oil in wood barrels in fourth class with oil in iron barrels.

(Page 370.)

Tabulated statement prepared by witness showing freight rates on oils in carload lots and less than carload lots and miles from St. Louis to different points in Missouri in one column and from Kansas City to different points in Missouri in the other column.

The classification of oils in wooden barrels in third class and in iron barrels in fourth class prevailed for many years prior to April 1st, 1905. Carload lots is oil in tank cars and has never been classified higher than fifth class freight. This is according to the Wes-

n Classification, which has been adopted by the Board of Commissioners. The schedules offered in evidence as applied to oils pped in wooden or in iron barrels or in less than *in* carload lots, es wooden barrels in fourth class, whereas prior to April 1st, 5, wooden barrels were in third class and the rate was higher.

(Page 378.)

Letter from A. M. Finlay, president of Waters-Pierce Oil Company, dated May 29th, 1900, "To Managers, Agents and Representatives of the Waters-Pierce Oil Company." Stat- that the Waters-Pierce Oil Company organized May 7th, 1878, dissolved on May 28th, 1900, and notifying employees that r services would terminate on May 31st, 1900. Also stating t the company had sold and would transfer all its property to Waters-Pierce Oil Company, organized May 29th, 1900, which property the employee was directed to hold for the new com- y.

(Page 379.)

etter from H. C. Pierce, president of Waters-Pierce Oil Com- y, dated May 29th, 1900, directed to Mr. —— ——, giving same rmation as contained in the foregoing letter and employing the son to whom the letter was directed as an employee of the new pany at the same salary.

he foregoing letters were admitted to be copies of letters sent out ll the representatives of the Waters-Pierce Oil Company.

George P. Jones.

(Pages 379 to 385, Inclusive.)

le is in the oil business and lives and does business in St. Louis. s both lubricating and illuminating oil. Been in the oil busi- for twenty-five years. He was formerly in the firm of Speer, es & Company, which done business in Kansas City. They ed business in Kansas City about 1889. In Kansas City they in competition Consolidated Tank Line Company, Schofield, rmer & Teagle and National Oil Company. Did not meet the ers-Pierce Oil Company there. Their main business was here a branch in Kansas City. When in Kansas City they got r oil from Eastern independent refineries, the same as they did in St. Louis.

From 1883 to 1889 they met dozens of companies in competition in St. Louis, but most of them sold only lubricating The only company selling illuminating oil then, and yet in ness, is the Waters-Pierce Oil Company. The St. Louis Oil pany started since 1889. Says he sells oil anywhere he can and no division of trade territory. Says he gets his oil from Penn- ania and Ohio.

Says the Standard Oil Company succeeded the Consolidated Tank Line Company at Kansas City. The Republic Oil Company succeeded Schofield, Shurmer & Teagle in 1901. The last firm named was a competitor of his and of the Waters-Pierce Oil Company. Says he knows Schofield, Shurmer & Teagle were more aggressive against everybody than the Republic in their line of doing business. The International Oil Works, located in St. Louis, was aggressive up to the time it was supposed to have sold out to the Waters-Pierce Oil Company.

He sells illuminating oil only in Illinois and Missouri and only in sections of Missouri. Says he cannot compete at points near Kansas City because of freight rates.

Joseph A. Buse.

(Pages 385 to 401, Inclusive.)

Lives in St. Louis and is vice-president of the George Henseler Oil Company. It is an independent company. Sells lubricating oil principally. Furnishes illuminating oil only on orders. Sells oil in a number of states. Has no dividing line of business and does not refuse to sell to any one. Gets oil from the East in carload lots and has no pipe lines.

He formerly worked for the Waters-Pierce Oil Company. Was employed by them in their works in St. Louis at 13th and Gratiot streets until about five years ago, when he became a city salesman in St. Louis.

205 The company had about thirty storage tanks at 13th and Gratoit running from fifty to four hundred barrel- capacity, fifty gallons to the barrel. The oils came from the East and the company had a pipe line across the Mississippi river through which oil was received. Oil was shipped out to various points from these storage tanks. Oils not received through the pipe line were received in Waters-Pierce tank line cars and Union Tank Line cars. When he became a city salesman there was quite a number of companies selling oil in the city, but most of them confined their sales to lubricating oils. The International and Schofield, Shurmer & Teagle sold illuminating oil.

Says he ceased work for the Waters-Pierce Oil Company the 1st day of March, 1905.

Says he made reports on every company he found selling their customers and he was told to keep on soliciting the trade. He was city salesman of lubricating oil and knew of customers who had made contracts for oils in the East which was furnished here by the Waters-Pierce Oil Company. Says he saw letters concerning contracts made in the East for oils to be furnished by Waters-Pierce Oil Company in St. Louis—these letters were written by Mr. McNall, Commercial Agent of Waters-Pierce Oil Company at 26 Broadway, New York. As to customers who had contracts made in the East he was told to call on them and see that the goods the Waters-Pierce Oil Company was furnishing were giving satisfaction

nd deliveries were made promptly and see that they were pleased nd satisfied.

McNall of New York would write about these contracts made in he East. he would see the letters and would then be told to call on he person or firm having the contract. He says McNall was com- nercial agent of the Waters-Pierce Oil Company.

He was a salesman for lubricating oils only and sold prin- 06 cipally to manufacturing establishments. He now does not remember whether letters received from McNall were on Vaters-Pierce Oil Company or Standard Oil Company letter heads.

George Wackerlin.

(Pages 402 to 403, Inclusive.)

Lives in St. Louis and has been in the retail grocery business here for sixteen years. Buys and sells coal oil. Buys from Vaters-Pierce Oil Company, Schofield, Shurmer & Teagle tried to ell him. The Republic Oil Company succeeded the last named rm. The Republic Oil Company never tried to sell him. He is lso buying from St. Louis Oil Company and Southwestern Oil ompany.

Charles W. Rippe.

(Page 403.)

Lives in St. Louis and has been in the general merchandise busi- ess there for twenty-three years. Buys and sells coal oil. Bought rom Waters-Pierce Oil Company and International Oil Works p to a few weeks ago. Is now buying from Southwestern Oil ompany and International. The firm of Schofield, Shurmer & Teagle tried to sell him, but the Republic Oil Company never did.

Manuel Cytron.

(Page 404.)

Has been in the grocery business by himself for a year and a half. le buys from the Republic Oil Company—the Waters-Pierce Oil ompany does not try to sell him.

He is in business in St. Louis. Says there is a large number of rocery stores which handle oil. He has never been solicited by ny other company except the Republic.

07 *Jacob Cytron.*

(Page 405.)

Is in the grocery business in St. Louis and as such buys and sells oal oil and gasoline. He first dealt with Waters-Pierce Oil Com-

pany, then with Schofield, Shurmer & Teagle, they having offered inducements, and since that firm went out he has been buying from the Republic Oil Company. Since he has been buying from the Republic the Waters-Pierce has not tried to sell him. No company has solicited his trade since he has been buying from the Republic.

Where he is now he sells about twenty gallons each of coal oil and gasoline a month. When he and his brother were together on Seventh street they sold about one hundred and fifty gallons of oil a week.

Incorporation Waters-Pierce Oil Company.

(Pages 417 to 423, Inclusive.)

Copy of articles of incorporation of Waters-Pierce Oil Company, filed with Secretary of State May 7th, 1878. Capital stock one hundred thousand dollars. Incorporators, William H. Waters, St. Louis, Mo.; Henry C. Pierce, St. Louis, Mo.; Horace A. Hutchins, Cleveland, Ohio; Frank D. Carley, Louisville, Ky., and William P. Thompson, Parkersburg, West Virginia.

Statement of increase of capital stock from one hundred to four hundred thousand dollars. Shows a meeting of the stockholders of Waters-Pierce Oil Company, at St. Louis, Mo., on June 13th, 1882, and present, in person or by proxy, William H. Waters, representing 400 shares; F. D. Carley, representing 200 shares; 208 H. A. Hutchins, representing one share; W. P. Thompson, representing one share, and George H. Vilas, M. R. Keith and George F. Chester, trustees, representing 398 shares.

The increased capital of $3,000,000 was subscribed as follows:

Chess-Carley Co., 600 shares	$60,000
Wm. H. Waters, 1,200 shares	120,000
Trustees Standard Oil Trust, 1,200 shares	120,000

A. H. Gardner.

(Pages 423 to 459, Inclusive.)

Lives in Kansas City, Mo., and has resided there for nearly thirteen years. Prior to coming to Kansas City he lived near Cleveland, Ohio, and Denver, Colorado. He was with the Excelsior Refining Company at Cleveland, Ohio, one year. Then he was with the Continental Oil Company at Denver, Colorado. Left Denver in November, 1902, and came to Kansas City, where he became connected with the National Oil Company.

The Continental Oil Company sold both lubricating and illuminating oils, but did not sell in Missouri. It sold in Colorado, New Mexico and Montana. It was not a competing oil company of the Standard. Its reports were made to Mr. Tilford in New York.

National Oil Company not connected with Standard Oil Company. This company gets its oil from Pennsylvania and Ohio, or from the National Refining Company. He came here in 1892 and has been

at this place as manager of National Oil Company ever since. When he first came to Kansas City the companies doing a general oil business were Consolidated Tank Line Company, Schofield, Shurmer & Teagle and National Oil Company; they were the only companies selling illuminating oil. There was other companies selling lubricating oils.

In 1901 Schofield, Shurmen & Teagle went out of business
209 and transferred to Republic Oil Company. Harry Teagle was the representative of Schofield, Shurmer & Teagle when he first came to Kansas City. The Standard Oil Company at Kansas City has had several managers since he came, Pratt, Davis, Mayer and Crenshaw. Crenshaw was afterwards general manager of Standard Oil Company, with headquarters at Chicago.

Schofield, Shurmer & Teagle and National Oil Company were independent companies. There was sharp competition between those companies and between each of them and the Standard Oil Company.

Shortly after he went to Kansas City the Consolidated Tank Line Company was changed to the Standard Oil Company. The only change made was in the name of the company; the same office, same brands of oil, same tank wagons, same managers and same employees generally.

When the Republic Oil Company began business it went after customers of National Oil Company, but not after those of the Standard Oil Company.

In August, 1902, his company began a rate war with the Republic and the two companies began to cut prices against each other, during which time the Standard Oil Company maintained its prices. Says that when he found that Standard Oil Company was maintaining prices his company went after their customers and forced the Standard to sell cheaper or lose customers. This fight continued for about two months.

Then Mayer met him at the Baltimore Hotel and told him that Walter Teagle, president of the Republic, and Crenshaw, general manager of Standard Oil Company, would be at Kansas City on a certain date and would see him and fix matters satisfactory, and for him not to go out and reduce prices on outside trade. Crenshaw came, called him up and wanted him to go with him and meet Teagle. Crenshaw said he expected Walter Teagle out there,
210 but he could not come and that he (Crenshaw) would have to handle the matter himself. Crenshaw told him that Teagle felt that he was not being recognized, that Mayer seemed to be the only man who had a voice in the matter. Says Crenshaw told him he had everything fixed with Teagle and that there would be no more trouble. That those rebate contracts made by the Republic Oil Company were very foolish and if he, Crenshaw, had known of them they would not have been made. There were contracts made by Teagle, manager of the Republic Oil Company at Kansas City, with certain customers to furnish them for a certain time at a certain fixed price. Then Crenshaw asked him to go up to the Coates House to meet and talk with Henry Teagle, manager at

Kansas City. He agreed to go. They went and met Teagle and Crenshaw would not let Teagle talk business. They talked awhile up stairs in the house, then witness and Crenshaw went downstairs and had a private talk. In this conversation says Crenshaw told him he had to sell "palacine" and get fourteen cents for it and Mayer will sell it under the name of eocene and only get eleven cents for it. Witness says he told Crenshaw that he never would give him any rest as long as they had the Republic in there to do their fighting, and Crenshaw told him that he expected Walter Teagle to be there to handle Henry Teagle, but it was all thrown on him, and that what they did that day and the conversation, etc., he didn't want repeated or anything said about it. This conversation with Crenshaw was in August, 1902, at Kansas City, Mo.

Schofield, Shurmer & Teagle had a tank station at Springfield, Mo., and he met them there; also met the Waters-Pierce Oil Company there, but did not meet the Republic Oil Company or Consolidated Tank Line Company.

Says his company has a dividing line with the Hannibal
211 Oil Company, because it is a company openly selling the products of the National Refining Co., which facts are advertised by letter heads, cards and in other ways.

He never meets the Standard Oil Company and the Waters-Pierce Oil Company doing business in the same territory.

Says that after Republic Oil Company succeeded Schofield Shurmer & Teagle at Springfield, Mo., the tank station there was discontinued.

The company he is manager of, the National Oil Company, was incorporated May 6th, 1890.

The products of the National Refining Company are handled by several different companies and each of them are assigned separate and distinct territory. The National Oil Company at Kansas City has a prescribed territory and the other companies do not sell in their territory. These facts are advertised in various ways.

Says his company had no arrangement with Schofield, Shurmer & Teagle, but that they were friendly and at the same time tried to get each other's business.

Says after the Republic Oil Company was formed his company objected to it principally because they cut and made prices and got business for the Standard Oil Company while the Standard maintained prices. Says the Republic started a war on his company first in August, 1902, and they run the price down from thirteen to eight cents, which was not stopped until Crenshaw came there to settle it after about three months. Says it was settled by the manager of the Standard coming there and giving to the manager of the Republic instructions to do away with any further scrapping with the understanding that the National Oil Company would let the contracts of the Republic alone until they expired.

Says he told Crenshaw that his company would not let up on them as long as they kept the Republic there and he has had that feeling ever since and has kept after them.

Says he gave Mr. Lake, who called to see him, what in-
212 formation he could to prove that the Republic Oil Company was a Standard Oil interest and not an independent company.

Says he is friendly with Mayer and Cochran.

Says they look upon the Republic Oil Company as a harder competitor than the Standard because it goes out after business that the Standard don't chase after, or such business as the Standard cannot get.

In regard to his conversation with Crenshaw in August, 1902, says Crenshaw told him he had seen Teagle of the Republic and arranged everything with him.

About six weeks after this rate war trouble, Henry Teagle, manager of the Republic, left and he was succeeded by Cochran.

W. N. Davis.

(Pages 459 to 485 Inclusive.)

Lives in Kansas City and has been connected with the Keystone Oil Company in that city for the past seven years. Prior thereto he was with the Interstate Oil Company in that city for about ten years. These companies sold lubricating oils mostly. They had no prescribed territory and sold anywhere they could. The Keystone handles various oils of independent refining companies wherever they can be bought. Such refineries are located in Pennsylvania, Ohio, West Virginia and various other centers. The Keystone comes in contact with all the companies doing business in the State. They never meet the Waters-Pierce Oil Company and Standard Oil Company selling in the same territory, either in Missouri or other places.

Says he was local manager in Kansas City of the Consolidated Tank Line Company prior to about seventeen years ago. As such he made reports to the general offices, then located at Cincinnati, Ohio. Also while with the Consolidated he made reports to Silas H. Payne, manager of the lubricating department of the Standard Oil Company, at 26 Broadway, New York.

213 Alexander McDonald was president of the Consolidated Tank Line Company.

The Consolidated got some of its oils from Whiting, Ind., and from other points. This company sold oil only in a prescribed territory. His description of that territory, or the line dividing its territory, corresponds with that given on the map introduced in evidence.

Says while he was with the Consolidated he built a station at Joplin in Jasper County, which was afterwards turned over to the Waters-Pierce Oil Company. This was about 1887.

Tank- at tank stations were built according to the conditions, sometimes they were small horizontal tanks and where more storage capacity was required, they were vertical.

While with the Consolidated they got information of competitive shipments from receiving clerks of railways and through a man

employed for that purpose. A special record of this information was kept and salesmen were notified and were expected to see that no more competitive oil was sold to a customer.

The Consolidated had a forwarding station in East St. Louis, where various lines of goods were kept, and when they were needed in a hurry at any particular station they were forwarded in car loads from there—This was rather a small station. The company did not sell oil in East St. Louis at that time. We sold no oil in what was known as Waters-Pierce territory.

Alexander McDonald was afterwards located at 26 Broadway, New York, and was a member of the executive board of the Standard Oil interests.

There was much more competition in the sale of lubricating oil than in the sale of illuminating oils.

Says that in his opinion the Standard Oil Company and Republic Oil Company sell in what is known as Standard territory
214 from ninety to ninety-five per cent of the illuminating oil sold and they do a much larger per cent of this business than in sales of lubricating oils. These companies do from twenty-five to thirty per cent of the lubricating business.

As a reason for there being less competition in the sale of illuminating oil witness says: The facilities of the Standard Oil Company are such that very few independents could raise the money to successfully compete against them. In all towns from fifteen hundred inhabitants up they have got tank stations established and they furnish oil in bulk, while the independents would be forced to ship in barrels. Another advantage is by shipping in tank cars they save about thirty per cent on freight rates. Then their system of dealing in tank wagons is such that the trade don't want to buy in barrels when they can possibly buy in bulk, and in order to compete with the Standard it would require vast sums of money. And further, to compete successfully you couldn't localize yourself. You would have to spread over the same territory and do business in the same manner and it is a well-known fact that no combination of independents could raise that amount of capital. (See pages 483 and 484.) Lubricating oil is handled differently—it is handled in packages and is sold directly to the consumer.

There has been large discoveries of oils adjacent to Kansas City recently and a refinery has been established at Sugar Creek by the Standard Oil Company.

Never knew of any except Standard Oil Company using Union Tank Line calls for shipping oil.

Edward P. Pratt.

(Pages 494 to 543 inclusive.)

Has lived in Kansas City, Mo., since 1892. Is now engaged in real estate, fire insurance, loans and investment business in
215 that city as a member of firm of Pratt & Thompson, and has been in that business for eight or nine years. About the

year 1886 he was connected with the Des Moines Oil Tank Line at Des Moines, Iowa, which was an independent company. The firm of Schofield, Shurmer & Teagle were interested in that company. In 1890 it sold out to Consolidated Tank Line Co. He then became manager of the Consolidated at that place. Then in 1892 he came to Kansas City as manager of the Consolidated Tank Line Co., and had charge of the regular territory allotted to the Kansas City station, which consisted of a part of Missouri and a part of Kansas. The St. Joe office of the Consolidated had charge of the northern parts of Missouri and Kansas and their office had charge of the central portion of Missouri and southern portion of Kansas. The Waters-Pierce Oil Company had charge of the southern portion of Missouri. Says he remembers the line dividing the territory of the Consolidated and Waters-Pierce. His company did not sell in Waters-Pierce territory, nor did Waters-Pierce Oil Company sell in his territory, nor did they sell in the same place anywhere. Says there was a map in the office showing the territorial lines. Identifies the line on map introduced in evidence as Ex. "A" as the dividing line between the two companies. In April, 1892, the Consolidated Tank Line Company was succeeded by the Standard Oil Company of Kentucky. Says he continued until the latter company was succeeded by the Standard Oil Company of Indiana in about 1896. The territory in which oil was sold remained just the same under all three of the companies. The business was carried on under all three companies in the same way and by the same officers and same brands of oil—there was some change in the officers when the change was made to the Standard Oil Company of Indiana.

As manager of the Kentucky company he reported to Cin-
216 cinnati and as manager of the Indiana company he reported to Chicago, Illinois. Mr. L. J. Drake was the general manager of all three of the companies during his connection with them. Says the Standard Oil Company of Indiana also took charge of the St. Joe office and territory in 1896 and this company has had charge of the business in both places ever since.

Consolidated Tank Line Company handled in illuminating oils what was called perfection, eocene and ealine, and these same brands were continued by the Standard of Kentucky and of Indiana.

When his company received an order from a customer in Waters-Pierce territory the practice was if it was urgent, to fill it and report simply the gallonage and the billing would be done by the Waters-Pierce Oil Company. If it was not urgent the order itself was referred to the general office. In such cases the collection would be made by the Waters-Pierce Oil Company. Says this same practice was followed by the Waters-Pierce Oil Company when it received orders from Standard territory. Says his traveling salesmen were given instructions as to the territorial line and were told not to go beyond it. Says his company had a tank station in East St. Louis and that oil was shipped from there into Standard territory.

The firm of Schofield, Shurmer & Teagle were competitors of his company and was an independent company.

Shipments of oil to his company came in Union Tank Line cars

and reports of these cars were sent to 26 Broadway, New York, to Silas H. Payne. Those reports were made the same by all three of the companies during his connection with them. His company got oil from Whiting, Indiana, and Cleveland, Ohio.

Under all three companies he had an arrangement with clerks in railroad freight offices by which he got information of shipments of oil to independent companies. This information was
217 given to traveling salesmen and station agents so that they might see the persons to whom the shipments were made and stop the shipments or get the business in some way even by making prices to secure it.

The only competitors his company had in the sale of illuminating oil was Schofield, Shurmer & Teagel and National Oil Company, but there was other competitors in the sale of lubricating oil.

Says his company did from ninety to ninety-five per cent of the illuminating oil business.

Page 510.

Annual report of Standard Oil Co. filed in office of Secretary of State Nov. 29, 1892, reporting for both Consolidated Tank Line Company and Standard Oil Company for year preceding June 1st, 1892.

Says they also had a map in the office at Kansas City showing division of territory between that office and the one at St. Joe.

Also says that orders coming to his territory from St. Joe territory were transferred to the St. Joe office and that office would transfer to the Kansas City office to be filled an order coming to it from the Kansas City territory. The object was for the proper territorial agency to get credit for the sale.

The East St. Louis station was maintained because saving in freight could be made by making shipments from there to certain points in the territory.

The tank car reports that were sent to Silas H. Payne, 26 Broadway, showed receipts of cars, giving the number and when they were unloaded. Payne was manager of the Union Tank Line Company. These cars are regular railroad cars with immense tanks on them for receiving oil.

What is meant by "charging" competitive shipments to agents is that each agent would have his territory, which he was expected to look after, and if it was found that these shipments went
218 into his territory, his attention was called to the matter so that he could report to the company as to why those shipments went into his territory and as to how we could get rid of the competition.

As to the system of getting information of competitive shipments through railroad employés he never heard of independent companies following the practice.

Never knew of oil being shipped in Union Tank Line cars to any other than Standard interests.

When he began with Consolidated Tank Line Company it had a plant at Armourdale consisting of about a dozen tanks for re

ceiving, storing and distributing oil and gasoline in bulk. The Standard of Kentucky took over this plant. When the Kentucky company began it had about a dozen wagons, by means of which it distributed oil to the retailers throughout the city, by filling the tank wagons at the tank station, driving the wagons to the place of business of the purchasers, the retailers, and transferring by means of open measures or buckets from the wagons into the storage tanks of the merchants. During his connection with the companies the tank station at Armourdale was increased and another station was built at Twentieth and Harrison streets in Kansas City. The tank capacity was very large. This increase took place under the Kentucky company and was a material increase. The Harrison street station consisted of three tanks, about one thousand barrels to the tank. After this last station was built the number of tank wagons was reduced because the source of supply was shortened. The business had very largely increased in gallonage before he left, caused by increase in population and consumption. When he began in 1892 a large per cent of oils was handled in barrels and when he quit the large per cent was being handled by tank stations and wagons. The bulk business had very largely increased.

During the time he was with these companies Schofield, Shurmer & Teagle in Kansas City sometimes had two and some-
219 times three wagons, and the National Oil Company about the same number, but they never increased their wagons or tank stations. The independent companies from 1892 to 1896 did not have the facilities to do the amount of business that was done by the Standard. They did the amount of business their facilities enabled them to do.

When he first started in 1892 there was about twelve tank stations in the territory and when he quit there was about forty. There was a large increase in the tank stations. Says he run tank wagons at all stations to distribute oil to dealers and to surrounding towns. The average tank wagons for the forty stations was about two or something like eighty in all. This increase in stations and wagons did not necessarily represent increase in volume of business, because the same places were supplied before by barrel shipments. The tank wagon delivery is more economical to the company and more satisfactory to the consumer. The trade prefers this kind of delivery.

During this time the independents also sold at these points where he had tank stations, but they shipped mostly in barrels, but at some of them they had tank stations. The National Oil Company had one wagon at Wichita and one at Topeka, and the Hannibal Oil Company had one at Hannibal, but they made no increase of their tank wagons. His company had two wagons at each of those places. These tank wagons were built from a motive of economy—there was more money in running tank stations. Profits were increased and trade held better and the trade was increased by such means.

Says that the brand of the Waters-Pierce Oil Company called "eupion" corresponded to the brand of the Standard called "eocene."

220 *George W. Musser.*

(Pages 543 to 567 Inclusive.)

Has resided in Kansas City, Mo., for twenty years and he is now traveling salesman for the Interstate Oil Company, which sells only lubricating oil. It is located in Kansas City and sells oil there and elsewhere. He was with L. D. Mix Oil & Naphtha Company from 1889 to 1892 in said city, which only sold lubricating oil. Then the Standard Oil Company bought the latter company out and he went with the Standard and took charge of their specialty department. In 1895 he became a salesman for the Standard and sold illuminating oil and continued in that position until 1897, when he severed his connection with the company.

While with the specialty department of the Standard until the fall of 1892 he worked under Mr. Stanley of Cincinnati, who was manager of that department when it was wiped out, and he worked under and reported to Mr. Pratt, the local manager.

Says he sold specialties in Standard territory in Missouri and all of Kansas and Nebraska.

The Standard Oil territory in Missouri was that section of the State with an irregular line running from Hannibal in a southwest direction down, including Moberly, Boonville, Sedalia, Clinton, Nevada and striking the State of Kansas at the lower border of Barton County. That part of the State north and west of this line was Standard territory. After the specialty department was wiped out Nebraska and the St. Joe part of the territory was taken away from the Kansas City territory.

The company at St. Joe was the same and sold the same brands. He identifies the line on map (Ex. A) introduced in evidence as the dividing line between the Standard Oil Company and the
221 Waters-Pierce Oil Company. There was a map in the office showing the division line and maps were furnished traveling salesmen so they would not cross the boundary.

The standing of a salesman was determined by the amount of goods he sold monthly and competitive shipments into his territory were taken into consideration. They were informed as to competitive shipments and instructed to get that trade and prevent outside shipments. They were authorized to cut prices and give other kinds of inducements in order to prevent competitive sales.

The information to the Kansas City office of these outside shipments came through the railroads.

In about 1896 he sold some oil in Jerico, Dade County, Mo. This was Waters-Pierce territory. In about ten days afterwards he was called into the office at Kansas City and given a "jacking up" for crossing the line. Says he knew it was not Standard territory, but he took a chance to increase his sales. Says his company lost the amount of the gallonage sold there—that it went to the credit of the Waters-Pierce Oil Company.

In August, 1892, he sold a carload of candles to be shipped to

Argentine, Mexico, which was Waters-Pierce territory. Says his company lost that sale because it was Waters-Pierce territory and it got the profits of the sale.

These specialties came from Cleveland, Ohio, and were shipped sometimes by way of Hannibal, sometimes by way of St. Louis.

These goods were shipped to Kansas City and then sold to points in the eastern part of the State like Hannibal, forty miles from St. Louis.

As an employé of the Interstate Oil Company he sells in both Standard and Waters-Pierce territory, but has never found them selling in the same territory.

The brands of illuminating oil sold by Waters-Pierce Oil Company are eupion and brilliant, and those sold by the Standard are perfection, eocene and caline.

222 While he was with Standard Oil Company it sold about ninety per cent of the illuminating oil sold in its territory and about forty-five or fifty-five per cent of lubricating oil. The sales by the Standard Oil Company and the per cent have increased since he worked for it. At the time he was with the company its strongest competitors were the National Oil Company and Schofield, Shurmer & Teagle.

Says the Republic Oil Company when it came into existence did not make the vigorous fight against the Standard that Schofield, Shurmer & Teagle had.

Says as salesman for the Interstate Oil Company he got along nicely with all competitors except the Standard. Does not try to get the business of any competitor except in an honorable way with the exception of the Standard, and he says he goes after their business and tries to get it any way he can—by offering inducements that he will not to customers of the other competitors.

Says on cross-examination that the brand of eocene of the Standard Oil Company was eupion of the Waters-Pierce Oil Company and brilliant of the Waters-Pierce Oil Company was perfection of Standard.

Says he is not familiar with the tests known as fire, flash and specific gravity.

Gottleib Kuenster.

(Pages 567 to 575 Inclusive.)

Lives at Maryville, Nodaway County, Mo., is 68 years old and has lived there since 1868.

He went into the oil business at Maryville in 1878—shipped it in carload lots and sold it at different points around. At that time he bought from various places and persons.

In 1881 he made a contract with W. H. Loomis of the Consolidated Tank Line Company at Hannibal, Mo., and then he
223 bought his oil from him. He continued to buy and sell this company's oil until they sold out to the Standard. Then he continued with the Standard until 1902, when he bought from

Hannibal; made no reports because he bought and paid for the oils. Afterwards he had to report to St. Joe. He made tank car reports to 26 Broadway, New York—these were Union Tank Line cars—made these reports since 1896, when they built a station and tanks at Maryville; before that he got oil in barrels.

Shortly after the Waters-Pierce Oil Company was organized in 1878 he went to St. Louis and wanted to buy from them and they told him they could not sell him because it was not in their territory.

W. J. Mercer.

(Pages 575 to 581 Inclusive.)

Has lived in Kansas City, Mo., for the past two years. Just prior to going to Kansas City he was at Dallas, Texas—there he was connected a part of the time with Atlantic Refining Company of Cleveland and part of the time with Globe Oil Company. During the years 1892 to 1896 inclusive he worked for the Waters-Pierce Oil Company in Texas and Louisiana. He begun as warehouse-man and worked up to salesman for Waters-Pierce. Has not worked for Waters-Pierce Oil Company since they were ousted in Texas nor since May 29th, 1909. The Standard Oil Company did not sell in Texas, but it did sell at certain points in Louisiana.

After he quit the Waters-Pierce Oil Company he came to Kansas City and went to work for Schofield, Shurmer & Teagle, and worked for them about two years. That company competed for the business of the Standard Oil Company and they operated tank wagons in the city. It had a tank station at Kansas City and Spring-
224 field—the latter place was a barreling station mostly. He quit this company in 1898 and it ceased to do business later on.

Since 1898 he has worked for the Interstate Oil Company, Globe Oil Company, National Oil Company and Fidelity Oil Company, and while with them sold oil in both the Waters-Pierce and Standard territory, but never found them selling in competition in the same territory.

The Waters-Pierce Oil Company sell as their leading brand of illuminating oil what is called eupion, and brilliant is its lower grade—one high class and the other low grade. The Standard Oil Company sells as their leading brands of illuminating oil what is called eocene, caline and perfection.

Since Schofield, Shurmer & Teagle quit business in 1901 he has been to Cleveland and saw that their tanks at that place were being removed.

Says he never worked for the Standard Oil Company or the Waters-Pierce Oil Company in Missouri.

He is now selling oil for the Fidelity Oil Company and sells anywhere he can.

Henry D. Whelan.

(Pages 582 to 622 Inclusive.)

Has lived in Kansas City, Mo., for the past five years. He formerly lived near Louisville, Kentucky. Has been connected with the oil business since 1900.

He was first employed as bookkeeper for Schofield, Shurmer & Teagle. Continued for three months in this position and was then made cashier

Schofield, Shurmer & Teagle had a station at Springfield, Mo., and it was one of their best paying stations. It was a tank station and also a shipping station or distributing point. Also a tank station in Kansas City.

225 At Springfield they met in competition the Waters-Pierce Oil Company and at Kansas City the Standard Oil Company and National Oil Company.

They, Schofield, Shurmer & Teagle, sold oil in competition with all other companies, and it was an absolutely independent concern. Their oils came principally from Cleveland, Ohio and some from Pennsylvania.

Says he continued as cashier until they sold out to the Standard Oil Company, about June 1901, and the business was then continued by the Republic Oil Company. He continued with the Republic Oil Company as cashier and chief clerk and acting manager at Kansas City in the manager's absence. Mr. Cochran was manager for three or four months and was then succeeded by Henry Teagle. Says he continued with the Republic Oil Company until May 1st, 1902.

When the change took place from Schofield, Shurmer & Teagle to the Republic Oil Company the old employés were continued.

But as quickly as it could be done there was a change in the bookkeeping, financial reports, gallonage reports and all the reports were completely changed. The forms used by the Republic were similar to those used by the Standard.

When with Schofield, Shurmer & Teagle they had a few tanks cars of their own in which oil was shipped to them. They did not use Union Tank Line cars.

Soon after the Republic was organized shipments of oil to it came from Whiting, Indiana, and the oil was unloaded into its tanks. On one occasion when a car came and the tanks of the Republic were full a wire came from Cleveland to send it over to the Standard Oil Company, and it was taken by that company.

There were frequent communications between the office of the Republic Oil Company and the office of the Standard Oil

226 Company in Kansas City. Says he talked with Mr. Mayer, manager of Standard Oil Company, himself—these communications related to the market price of tank wagon oil and gasoline in Kansas City. Mayer would give to the Republic office the information that oil had gone down or up, as the case might be, and

this information was followed and acted upon by the Republic. This information was usually given by Mayer over the phone.

Mr. Teagle's instructions to salesmen were that he wanted them particularly to go after National Oil Company customers, he wanted the trade that bought National Light oil, White Rose gasoline brands—there were no instructions given to go after the business of the Standard. The National Oil Company was the only other company of any consequence, outside the Standard Oil Company and Republic Oil Company, selling illuminating oil.

Schofield, Shurmer & Teagle territory was a part of Kansas, a part of Missouri and a part of Oklahoma, and their brands were palacine, snowdrop, I. X. L., gasoline, red cross gasoline and some other grades.

Schofield, Shurmer & Teagle had no division lines, but sold at points where it was profitable to do so. In Missouri they sold at St. Louis, Springfield, Kansas City, Sedalia, St. Joe, Warrensburg, Pleasant Hill, Lamar, Garden City and other points in the state.

Schofield, Shurmer & Teagle never consulted any other company about the changes in prices. They either made the prices at Kansas City or they came from Cleveland, the head office.

When the Republic Oil Company begun business the Springfield station was discontinued.

At one time the Republic was out of gasoline and it got five hundred gallons from the Standard at Kansas City and paid for it.

227 He has been chief clerk of the National Oil Company since May, 1902, at Kansas City.

Refinery prices of oil fluctuate and as a general rule those prices control the jobbing trade.

While with the Republic he never saw any lists of refining prices. The only information the Republic had of retail prices came from the Standard.

A. G. Shiers.

(Page- 622 to 640 Inclusive.)

Now lives at Marietta, Ohio, is with the Penn Refining Company of Oil City, Pennsylvania, as a traveling salesman. This is an independent company.

He was with the Republic Oil Company as assistant manager at Kansas City from June, 1902, until December, 1902. Had been with the same as manager at St. Joe for a while. While at St. Joe the Republic Oil Company and Standard were the only competitors selling oil there. When he went to Kansas City he found the Standard Oil Company, Republic Oil Company and National Oil Company selling illuminating oil there.

Previous to going to St. Joe he was with the Argan Refining Company at Marietta, Ohio. This was at first an independent company, but in about 1899 it become connected with the Standard Oil Company and it was this year that this company was compelled to leave the state of Ohio and removed to West Virginia.

He got a position with the Republic Oil Company through W. C. Teagle, vice-president and general manager, at Cleveland, Ohio. Says he knew the firm of Schofield, Shurmer & Teagle and that it was an independent and competing company of the Standard Oil Company.

At Kansas City with the Republic Oil Company, Harry Teagle, manager, he had charge of the city business in the lubri-
228 cating line. He had to look after the tank wagons and also to see after the illuminating sales of oil and gasoline. The brands sold were palacine and water white gasoline. The Standard Oil Company was selling eocene, perfection and gasoline. Says he had instructions from the manager to make particular efforts on the trade of the National Oil Company. Says he was to get certain customers of the National named and to rebate one cent a gallon if necessary to get them. No instructions to rebate as against the Standard Oil Company. He gave the rebates and got the National's customers. Never gave rebates to Standard Oil customers.

Says he was informed that the Republic Oil Company was an independent company and was instructed to make such statements to the trade, which he did in good faith.

The rebate system against the National continued some of it for six months and some for a year, and it precipitated a rate war between the National Oil Company and Republic Oil Company.

Says the Republic Oil Company got its prices, whether an advance or decline, from the Standard Oil Company by telephone there in Kansas City, and part of the oils came from Whiting, Indiana, where the Standard Oil works are located. He knows of no other refinery there.

Says he instructed the tank wagon salesmen to represent to the trade that the Republic Oil Company was a competitor of the Standard Oil Company. Where he found prejudice against the Standard he represented that the Republic was an independent company and opposed to the Standard—that the Republic Oil Company was an Independent concern handling Pennsylvania goods and had no connection with the Standard Oil Company whatever. Says he thought he was telling the truth.

Says he sold to Standard Oil Customers whenever he could but did not cut prices to get their trade. He was told directly not to rebate any Standard Oil trade by Henry Teagle, the manager.
229 Says he does not know of the National Oil Company giving rebates, but they came down in their prices to the basis of the rebate.

He says there never is a rate war in the sale of lubricating oils.

In 1901 while at St. Joe says he got a car of oil that he could not unload because his storage tanks were full and he was ordered by Mr. Teagle from Kansas City to set it over to the Standard Oil Company, which he did. This car came from Whiting. There was no competition between the Standard Oil Company and Republic Oil Company at St. Joe. As to the business at Kansas City, there was no competition between the two companies except in the sale

of lubricating oil; says he went after their business in lubricating oil.

Says as cashier of the Republic Oil Company he found the same system of doing business used by the Standard Oil Company. He knows of Standard Oil Company getting gasoline from Republic tanks at St. Joe when they run out. This was not paid for, but a transfer invoice was made.

W. H. Hawkins.

(Pages 640 to 657 Inclusive.)

Lives in Kansas City and is now a manufacturer of paints. He was formerly connected with Consolidated Tank Line Company and Standard Oil Company at Kansas City. He was under both Mr. Pratt and Mr. Mayer as managers. When the change took place to the Standard Oil Company there was no change in the manner of doing business.

Says he was superintendent of tank wagons in that city, and it was his business to see that the Standard got all the business. Most any method that seemed fit was resorted to—rebates were given,
230 perfect tab was kept on other people as to the business they were doing. The object was to get the business away from others. Men were hired to follow other wagons and get a record of amounts sold and to whom.

He began work in 1890 and quit in 1897.

When he found to whom other companies were selling they went around and in order to get the trade away rebates of so much a gallon was given, payable monthly. Towards the end these rebates run up to about $3,500.00 a month.

Says they solicited the business of all other companies, but they were especially after the National Oil Company and Schofield, Shurmer & Teagle. These two companies were the strongest competitors.

A complete record of every merchant in the city was kept. All traveling salesmen were fully instructed as to the dividing line between Waters-Pierce Oil Company and Standard Oil Company and to keep out of Waters-Pierce territory.

Says he was with Schofield, Shurmer & Teagle from 1887 to 1890 and that there was a constant war between that company and the Consolidated Tank Line Company. Schofield, Shurmer & Teagle could not do business like the Standard. Prices were made so low that they could not cut them. It was all they could do to meet the prices made by the Standard. The only way they could do business was by arguments, and there was some people who would trade with them anyway and pay them higher prices. Says he never gave rebates for them.

The rebate system of the Consolidated and Standard continued from 1890 to about 1896, when he ceased to be superintendent of tank wagons.

It was the Consolidated Tank Line Company up to 1892, from that date to about 1895, it was the Standard Oil Company of Kentucky,

and from the latter date on the Standard Oil Company of Indiana.

231 Says they rebated some two hundred and fifty customers a month and the rebates amounted to about a quarter of a cent a gallon on the total gallonage. The rebates were larger about the time he ceased to be superintendent.

Says that he worked for Schofield, Shurmer & Teagle at St. Joe prior to 1887 and that they very frequently got a countermand for a car of oil. He found that the Standard would learn when a shipment was made and head the car off and get the order countermanded when they could.

Says "everybody that has worked for the Standard Oil Company were given to understand that they must have the business; that that was the only thing their position or anything else depended on."

Says the Standard Oil Company regularly got information from employees of the railroads about shipments of oil made by competing companies.

Says he saw a map in the office at Kansas City showing the division line between the Waters-Pierce Oil Company and Standard Oil Company and had heard this line discussed in the office by the managers and salesmen. He has seen the map in the Kansas City office within the last four years and it shows the same division of territory except that it is more complete.

Also he says they got information of oil shipments to competitors through some employee of the competitor by subsidizing him.

W. R. Stewart.

(Pages 657 to 663 Inclusive.)

Lives at Des Moines, Iowa, and is a traveling man, but has no particular business at present.

Says he has been connected with the oil business pretty near all his life.

Alexander McDonald was president of the Consolidated Tank Line Company. He was also president of Standard Oil Company of Kentucky.

232 Mr. Drake was connected with Consolidated Tank Line Company, also the Standard of Kentucky and of Indiana.

Says he went with Consolidated Tank Line Company in 1890 and remained with it and the Standard Oil Company of Kentucky and Indiana until 1898.

Chess-Carley Company was located at Louisville, Kentucky, and was an oil company. This company was succeeded by Standard Oil Company of Kentucky. And about the same time the Consolidated Tank Line Company went out of business.

Frank D. Carley was connected with Chess-Carley Company. He afterwards went with the Standard.

The last he heard of Alexander McDonald he was at 26 Broadway, New York City, the Standard Oil building.

Horace A. Hutchins was connected with the Standard Oil Company at 26 Broadway.

W. P. Thompson was one of the main men of the Standard Oil Company at 26 Broadway.

Says he was general manager of sales department when he was connected with the Standard Oil Company in Missouri. He looked after sales in the territory at Kansas City and St. Joe. He gave instructions to salesmen.

Since 1898 he has been in the news business, telegraph business, crude oil business, oil producer and telephone.

The only refinery of oil at Whiting, Indiana, is what is known as the Standard Oil Refinery.

Bruce Phipps.

(Pages 665 to 667 Inclusive.)

Lives in Kansas City and has been in the grocery business there eighteen years. Along in 1902 he was buying of the National Oil Company when the Republic Oil Company came along and offered and paid him a rebate of about one cent a gallon and
233 got his trade. The rebate was paid monthly in cash. The agent, Mr. Shiers, told him that the Republic Oil Company was an independent company. The Standard Oil Company and the Republic Oil Company never rebated to him as against each other. Says he got the rebate from the Republic for about a year.

W. A. Grace.

(Pages 665 to 670 Inclusive.)

Is now in the grocery business in Kansas City and has been at the same corner for the past six years. He buys oils from the National Oil Company. Says an agent of the Republic Oil Company tried to sell him and when he charged that it was a Standard Oil Company, he, (the agent) directly and positively said to him that it was an independent company from the Standard Oil Company. This salesman was Shiers. He wanted to make a contract for six months or a year and give a rebate of one cent a gallon, but witness refused to make the contract. National did not give him a rebate, but met the price fixed by the Republic.

Ferd Weyrich.

(Pages 670 to 671 Inclusive.)

In the grocery business for fourteen years at Kansas City. For last three years he has been buying oils—buys from Standard Oil Company. Republic has not solicited his trade—never heard of them.

Isaac Weinberger.

(Pages 671 to 674 Inclusive.)

Has been in the grocery business in Kansas City for sixteen years. Bought oil from the Republic Oil Company about three years ago. Mr. Teagle came to him and when he told
234 Teagle that conditions being equal he would not buy of the Republic because it was a Standard Oil Company, Teagle told him it was not so. But Teagle gave him a reasonable rebate and he traded with that company. He was buying of the National Oil Company at that time. Standard Oil Company did not try to get him away from the Republic. Then the National offered him a better inducement and he went back to them. Says he also got rebates from National and Standard Oil Company, but got rebates from Standard before Republic began business.

J. S. Willis.

(Pages 675 to 678 Inclusive.)

Additional schedule of rates prepared by J. S. Willis, Secretary of Board of Railroad and Warehouse Commissioners.

Charles B. Collins.

(Pages 686 to 710 Inclusive.)

Lives in St. Louis, Missouri, and has lived here since 1877. He began work for Waters-Pierce Oil Company in 1895 and quit about two years ago as clerk and messenger in the president's office. When Mr. Pierce would go to New York he would go with him. He, H. Clay Pierce, was president of Waters-Pierce Oil Company. Mr. Pierce moved to New York in about 1901. Mr. Pierce was president until about 1900 and after the reincorporation he was again made president.

Pierce had an office at 25 Broad Street, New York. He was with Pierce in New York as his private secretary. Pierce received checks from the Waters-Pierce Oil Company in payment of dividends at least once a month. Usually immediately after these checks were received a remittance was made—on two occasions to Mr.
235 H. M. Tilford at 26 Broadway, New York—these two remittances were delivered by witness personally. The amount he took to Tilford was about two-thirds of the dividend check received by Mr. Pierce.

Prior to 1900 Mr. Pierce held about one-third of the stock of the Waters-Pierce Oil Company.

When he did not take checks to Tilford, he invariably made out a check amounting to two-thirds of the dividend check with which

there was purchased a check made payable to the Seaboard National Bank. An account of these transactions was kept by witness on Mr. Pierce's private book. These transactions continued for about two years. The Seaboard National Bank is in the Standard Oil Building. He received dividends on all the stock of Waters-Pierce Oil Company except five or six shares.

F. B. Northrop.

(Pages 710 to 714 Inclusive.)

Lives in St. Louis, Mo., and is now connected with the Northrop Lubricating Oil Company. Has been in the oil business for fifteen years. The principal business of his company is done in St. Louis.

The Standard Oil Company of Indiana has done no business in St. Louis in the last fifteen years. The Waters-Pierce Oil Company and Republic Oil Company sell oils in St. Louis. His company competes with the Waters-Pierce Oil Company in that city.

William H. Babcock.

(Pages 714 to 717 Inclusive.)

Lives in St. Louis and is engaged in the oil business in that city with the Crescent Oil & Supply Company. The companies selling oil in St. Louis in the last four years were Waters-Pierce Oil
236 Company, J. D. Street Oil Company, George P. Jones, George T. Mathews & Company, George W. Reid Oil Company, St. Louis Oil Company, Republic Oil Company, formerly Schofield, Shurmer & Teagle, Gregory Oil Company, Mound City Oil Company, his own company and others. These companies all sell more or less of both lubricating and illuminating oils.

Those having tank stations are Waters-Pierce Oil Company, St. Louis Oil Company, Republic Oil Company and International Oil Works. Tank stations are usually used for illuminating oils, gasoline and naptha.

Standard Oil Company has never done business in St. Louis. Says he sells mostly south and west in Missouri, and meets the Waters-Pierce in competition. Never found the Standard Oil Company and Waters-Pierce Oil Company competing for business in the same place.

Says the business of his company is principally selling lubricating oils. Only sells illuminating oils to accommodate his customers.

A. S. Cale.

(Pages 718 to 721 Inclusive.)

Has been connected with the oil business in St. Louis for about four years and is now with the Mound City Oil & Supply Company.

His company has no circumscribed territory, but sells oil anywhere. Standard Oil Company of Indiana has sold no oil in St. Louis since he has been in business there. Has sold in Missouri at points where the Standard sells and at other points where Waters-Pierce sells, but has never found them both selling at the same place. He sells principally lubricating oils and all other companies are his competitors.

Says he has bought oils from the Waters-Pierce Oil Company and Republic Oil Company and refineries East.

237 *George T. Mathews.*

(Pages 722 to 724 Inclusive.)

Is with George T. Mathews & Company, an oil firm that sells lubricating oil in St. Louis. Runs no tank wagons. Does business in several states. Says he is in charge of the business of the firm. Sells in different parts of the State of Missouri. Meets both the Waters-Pierce Oil Company and Standard Oil Company in competition with them, but has never met the two at the same place. Says his company did business awhile in St. Joe, Missouri, and there he met the Standard Oil Company and Republic Oil Company. Standard Oil Company does not sell oil in St. Louis. Waters-Pierce Oil Company did not sell oil in St. Joe.

C. M. Adams.

(Pages 728 to 755 Inclusive.)

Is secretary and treasurer of the Waters-Pierce Oil Company located at St. Louis, Mo. He has resided in this city about twenty-eight years, and has been connected with the Waters-Pierce Oil Company since its first incorporation in 1878.

He was bookkeeper for the Standard Oil Company at St. Louis for four or five months after he first came to the city, and then it ceased to do business in St. Louis. William H. Cobb was manager for Standard Oil Company while it done business there. It ceased to do business on the organization of the Waters-Pierce Oil Company. The Standard has not done business in a local way in St. Louis since 1878, nor through any company owned by them. It has, however, sold by wholesale to the Waters-Pierce Oil Company. Waters-Pierce has purchased the largest part of its oils from the Standard. Oil now comes from Whiting, Indiana; Frank-
238 lin, Pennsylvania; Beaumont, Texas; Port Arthur, Texas; Neodesha, Kansas; Sugar Creek, Missouri—a great many places. Gets its oil in Union Tank Line cars.

In 1878 he was made secretary of Waters-Pierce Oil Company, served one year as secretary and was then made treasurer. Continued as treasurer two years. Then he was secretary and treasurer for several years. Then he was treasurer for several years. He

has been secretary or treasurer or both since the company was organized on May 7, 1878.

On May 29, 1900, there was a reincorporation of the company and the old company ceased to do business. The new company used the same offices and operated the same properties as the old company; did business in the same name; sold in the same territory as far as he knows; there was some change in the officers, but the subordinates and employees were practically the same; as far as he knows it was a continuation of the old business; got their oil from the same source. Mr. Grewett was the first secretary of the new company, he, witness, was treasurer. Grewett resigned during winter of 1905 and witness became secretary and treasurer.

The Standard Oil Company doing business here in 1878 was a branch of the Standard Oil Company of Ohio. Horace A. Hutchins was connected with this company. W. P. Thompson was afterwards connected with the Standard Oil Company. Hutchins was in charge of the sales department of the Standard doing business here in 1878. W. P. Thompson in 1878 was connected with the Camden Consolidated Oil Company of Parkersburg, West Virginia. The original incorporators of the Waters-Pierce Oil Company were, as far as he remembers, Mr. Waters, Mr. Pierce, Mr. Hutchins, Col. Thompson and Mr. Carley. Hutchins at one time had an office at 26 Broadway, in connection with the Standard Oil business.

239 *William A. Morgan.*

(Pages 760 to 818, Inclusive.)

His home is in Sedalia, Pettis County, Mo. Began working for the Standard Oil Company in January, 1898. First begun as traveling salesman and then had charge of tank station at Sedalia. He had six counties as his territory. At Sedalia he had the local business and a few outside towns. Had two to three men working under him. He worked for about a year as salesman and two years in charge at Sedalia. Sedalia was under the jurisdiction of the Kansas City office. Mayer was manager at Kansas City most of the time. E. C. Conkling a part of the time.

When he was traveling salesman, Schofield, Shurmer & Teagle were his competitors. Did not meet the Waters-Pierce Oil Company in competition. Also had Schofield, Shurmer & Teagle as competitors at Sedalia and they were very active competitors. Says that when he went to Sedalia as local manager, Schofield, Shurmer & Teagle had fifty per cent of the business and when he left there he had at least ninety per cent of it. Says he worked under instructions from G. W. Mayer, manager at Kansas City, and his instructions were to go into the field and destroy all competition, not to allow competitors to sell a barrel of goods anywhere. The Waters-Pierce Oil Company never sold in the Sedalia territory, nor did it try to do so, but they sold oil within eighteen miles of Sedalia.

Says he had instructions not to sell in Waters-Pierce territory and he was informed as to the lines, but he did get over the line

once down in Hickory county and sold oil in their territory, and was called down for it when he got to Kansas City. Says Mayer told him not to go over the line—that if he sold stuff there he would get no credit for it. Says at this place where he got over the line
240 his company could put oil there cheaper than the Waters-Pierce Oil Company and at less cost to the merchants.

When oil was shipped into his territory by a competitor it was held against him and he was called on to account for it.

He says the Waters-Pierce Oil Company was selling oil one cent a gallon higher just across the line than he was in his territory.

Schofield, Shurmer & Teagle went out of business shortly after he quit the Standard and was succeeded by the Republic Oil Company.

Says at Sedalia gauges were furnished him for the purpose of measuring the oils of his competitors, but he would not use them and they soon went out of use. He does not know whether they were correct or not.

In regard to these gauges he was instructed to use them in extreme cases when other arguments failed, to measure the oil packages of competitors in order to show the purchaser that his barrels were short.

Witness produces a blank report which he used at Sedalia. Reported on this blank monthly to Kansas City. It showed outside oils shipped into his territory by stating date shipped, name of shippers, from what place, name of consignee, destination, name of substation, number of car, number of barrels of refined oils, gasoline and lubricating oils, etc. Says it was his duty to get this information in any way he could. He got the information by going to the railroad stations and examining the packages and by talking with the railroad agents.

When these outside shipments were made into his territory he did all he could to get them countermanded and at once began to do all he could to get the customer away from the independent company. He would give rebates and undersell the outsider in order to get the trade.

He produced a letter from Mayer, manager at Kansas City,
241 urging him to begin at once getting orders for future delivery of refined oil. Suggests that as a good plan to cut off competitors. This letter is dated August 11, 1898.

Also a letter from Mayer, dated June 2, 1898, informing him of outside shipments made into his territory, and adding, "I trust you are making a vigorous effort to get this cut off."

Says that following the suggestions contained in the last letter he went to see the people who were purchasers of independent oil cut prices and got the business by any method he saw fit to pursue. Says he told purchasers the oil was not up to the standard and was short.

Also another letter dated May 20, 1898, to witness from G. W. Mayer, Kansas City, relating to outside shipments of oil by competitors, especially the Brook Oil Company, and urging him to find out who purchased the oil and to go to work to get their trade.

At Sedalia he sold perfection, the popular oil, eocene, 175 head

light and prime white brands of coal oil, and crown gasoline. Says there were five tanks at Sedalia. The highest priced brand was eocene, the next 175 head light, the next perfection and the cheapest prime white.

Says he has marketed two and three grades out of the same tank. Says he had instructions to do so.

He did not sell at Tipton, a town twenty-five miles from Sedalia—the Waters-Pierce Oil Company sold there. Says he sold south of Sedalia for a distance of fifty miles. Says he had instructions not to sell at Tipton.

Prior to going with the Standard Oil Company he was a bookkeeper for Kellogg Newspaper Comapny at Kansas City.

After he quit the Standard he went to work for Merchants Oil Tank Line Company at Leavenworth, Kansas, a branch of the National Refining Company. Was with them as traveling salesman for about three years. He had a certain territory that he
242 worked in. The National Oil Company marketed the same oil from Kansas City in a different territory—they didn't go into the territory of his company nor did his company go into their territory.

After this last service he went into the newspaper business again in Kansas City. Has been with his present company about four months. After quitting the Merchants Company he took a vacation for a year on account of ill health.

He is now with the National Refining Company at Hannibal, Mo., or the Hannibal Oil Company, which is the name of the company doing business there selling the products of National Refining Company. This company does not sell in territory where the National Oil Company of Kansas City or Merchants Oil Tank Line Company of Leavenworth, sells.

Says he was called into the office at Kansas City when he worked for the Standard Oil Company about once a month and was given oral instructions by the manager. His general instructions were to go into the field and by any means crush out competition.

T. R. Hopkins.

(Pages 829 to 861, Inclusive.)

Now lives in Lawrence County, Missouri, five miles east of Pierce City. He is now engaged in farming and has been for the past two years.

He has been local or station agent for Waters-Pierce Oil Company. He began at Seneca, Missouri, in 1885 or 1886 and at that time he was a barrel agent, selling on commission. Then he came to Joplin and stayed about six months. Then went to Webb City and established an agency there. Then he was sent to Pierce City, established the Pierce City agency there and remained in charge of it for twelve or thirteen years, or up until about two years ago. At Pierce City he

had about twenty towns in his territory that he took care of
243 and furnished with oil. He had a tank station at Pierce City. He quit the company on November 15, 1903.

Says he reported and worked under managers of the Missouri division located at St. Louis, they were Andrew M. Finlay, Mr. Lasar and Mr. Ackert.

When he first begun to work the name of the company was the same as when he quit. Says that about the time the company had trouble in Texas agents were discharged, a new company was formed and they were hired again. Says that he was discharged by the old company in one envelope and hired in the next.

The same business was continued under the new company as under the old company.

Never met the Standard Oil Company in competition. At Webb City he was seven or eight miles from the Kansas line where the Standard Oil Company sold, but it did not cross the line nor did he go into Kansas. Says he was told by the manager that he must not sell oil in Standard territory and that the Standard could not sell in his territory. Mr. Lasar, the manager, had a map which he showed witness with lines showing the territory between the two companies.

Got his prices at which to sell oils from the St. Louis office.

Says Schofield, Shurmer & Teagle invaded his territory at Monett and Pierce City and they were active competitors of Waters-Pierce Oil Company. He went after the trade of Schofield, Shurmer & Teagle and gave rebates in order to get it. Schofield, Shurmer & Teagle invaded his territory only twice and Wilhoit once at Sarcoxie, but with that exception he had no opposition at Pierce City in the sale of illuminating oil.

Says Mr. Ackert, manager of the Missouri division, gave him to understand that he would have no opposition from the Republic Oil Company when it succeeded Schofield, Shurmer & Teagle.
244 During the last two or three years of his agency the price of oil in Joplin, Carthage, Webb City and Springfield was from one and a half to three cents less than in his territory. There was little competition in his territory, but Wilhoit was in the other territory. Says he took this matter up with Mr. Ackert, telling him it was not fair to charge his customers more and he was told it was none of his business—that there was competition in Joplin and those other places.

Says he received orders for oil from persons in Standard Oil territory. He did not fill them, but sent them to St. Louis, because it was not in his territory. Says that he was told by the manager that if he sold anything out of his territory the company would not receive the profit and to send such orders to St. Louis. Also says he received and filled one order which had been set by a person in his territory to the Standard Oil Company. This order came to him from St. Louis.

Says that about the time Schofield, Shurmer & Teagle sold out to the Republic Oil Company, the general manager at the Harve-

House in Monett told him: "We will not be troubled; you need have no fears of the Republic Oil Company."

Says he had orders to get information of all competitive shipments and report them—that he got no information from railroad agents.

While he was at Webb City he got a telegram from St. Louis to look out for a carload of National Oil before the car got there, and by seeing all his customers beforehand he prevented the sale of the oil. This was about the year 1890.

He states that prior to 1900 he received his salary by checks drawn on the Chatham National Bank of New York. They were made payable to the manager and by him indorsed to witness. Says the checks were dated at New York City. After 1900 his checks for salary were dated at St. Louis and drawn on the Bank of Commerce, St. Louis.

245 *T. C. Eberly.*

(Pages 861 to 865, Inclusive.)

Lives in Joplin, Missouri, and is in the grocery business and has been for about seven years. Prior thereto he was located at Ausbury, about fifteen miles from Joplin in Missouri, but about three-quarters of a mile from the Kansas line. He was in the grocery business at Ausbury for about three years. While there he bought oil from the Waters-Pierce Oil Company agent at Webb City. In about 1895 while at Ausbury he bought some oil from the Standard Oil Company at Pittsburg, Kansas, bought because either it was cheaper or more satisfactory, he does not remember which. Says he got oil only a few times from Pittsburg because he was in Waters-Pierce territory and he was told that they could not sell him from Pittsburg, that he would have to buy of the Waters-Pierce Oil Company. Says he was a little nearer Pittsburg than Webb City. Says he got a letter from Standard Oil Company at Kansas City telling him he was in Waters-Pierce territory and they could not sell him.

E. M. Wilhoit.

(Pages 865 to 904, Inclusive.)

Has lived in Springfield for three years past. Just prior was at Joplin, Mo., for about five years, and just prior to that lived at Topeka, Kansas, for about four years.

At Topeka, Kansas, he was agent for the Standard Oil Company of Indiana he thinks, being the same one that done business in Missouri. Says he first begun with the Consolidated Tank Line Company—Alexander McDonald, president. He was local agent at Topeka and had the city of Topeka.

246 Previous to going to Topeka he traveled for the Standard Oil Company out of Wichita, Kansas. He was with the company in Kansas a fraction over eight years altogether. His

mpany could not sell in Indian Territory only on orders—the
aters-Pierce Oil Company done business there. Says they kept
aters-Pierce Oil Company labels and when oils were shipped into
territory, these labels were placed on the barrels and their
ling was on the Waters-Pierce Oil Company at St. Louis—this
s while he was with the Consolidated Tank Line Company and
ndard Oil Company in Kansas, prior to 1900. The labels re-
red to designated the different brands of Waters-Pierce Oil—this
was taken out of Standard tanks and such labels placed on the
rrels.

When he came to Joplin, Mo., he went into the independent oil
siness in his own name, that is, selling refined and lubricating
s in Southwest Missouri. He now has tank stations both in Joplin
d Springfield. Says he has been a competitor of both the Stand-
l Oil Company and Waters-Pierce Oil Company and in no in-
nce has he met those two companies selling oils in the same terri-
y. Says he does not know exactly the division line between
se two companies, but knows that where one sells the other does
t sell.

The oils sold by the Standard at Galena formerly came from
hiting, Indiana, but now come largely from Neodesha, Kansas.
is is also true as to the Waters-Pierce Oil Company at Joplin.

From Joplin to the Kansas line or Galena is about six miles—
ndard sells in Galena and Waters-Pierce in Joplin.

Since the action of the Kansas Legislature about a year ago, oils
ve usually been lower in Galena than in Joplin, prior to the
ion of the Legislature they were higher in Galena than in Joplin.

Says the only time he has seen the Standard tank wagons in
issouri was when they would run short of oil and come to Joplin
and get oil from the Waters-Pierce Oil Company's tanks
7 located there—has seen that as many as two or three times.

Says his experience has been that the Waters-Pierce Oil
mpany or Standard Oil Company base their prices in a locality
their nearest competitor, or upon the presence or absence of
mpetition. Where there was competition prices would be lower
d increase with the distance from competition. Says that the
et that the two companies, Standard and Waters-Pierce, were
ling near each other did not affect prices—has never known of
ese companies competing with each other.

When he begun the oil business Schofield, Shurmer & Teagle
re selling oils and had tank stations at Springfield, Kansas City,
dalia and Clinton. He met this firm in competition and they
re competitors of the Standard and Waters-Pierce. This firm
sed to do business about 1901 and were succeeded by Republic
l Company. Soon after, he having heard that Schofield, Shurmer
Teagle had sold out to Standard Oil Company, he went to Spring-
ld with a view of opening up an independent business there. He
nd that the plant there had been enlarged and painted with the
ual Standard red on barns and warehouses. Shortly after his
p to Springfield the plant was dismantled—that is, the plant of
public Oil Company, and they have had no tank station in this

territory since. Shortly after the departure of the Republic witness established a tank station at Springfield, but that company has sold some oil in this part of the State since, shipping from Kansas City, Sedalia, or Clinton. Says the class of trade the Republic Oil Company sells largely is a class of trade that feels loyal to the independent dealer. The Republic made a specialty of looking after that class of trade which demanded a better grade of oil than was handled by Waters-Pierce Oil Company or Standard Oil Company—they handled the old brand, palacine, which was a high grade
248 Pennsylvania oil sold by Schofield, Shurmer & Teagle. Says he finds more competition from the Republic than from Waters-Pierce or Standard, because the Republic is putting out better oil than the other two companies.

In relation to tank stations he says they are hard competitors. The tank competition is hard to overcome. From three to five cents more per gallon can be got at tank stations than the person who sells in barrels.

In regard to the sales of an independent in this territory witness says: "It depends largely on the sales in bulk of the independent dealer as to what per cent of goods he can market at a profit. If in operating against the Waters-Pierce Oil Company one attempts to get all the business that they might possibly secure they wouldn't last very long in the business, in fact, the price would be made so extravagantly low there would be no profit." Says his "experience has been while with the Standard Oil Company and since operating in opposition to the Waters-Pierce Oil Company, that the independent dealer can market a small percentage of goods in any territory at a profit, and possibly then market their goods at ten or fifteen per cent less than the Standard or Waters-Pierce regular price, but if he increases his volume of business above a certain percentage, say fifteen or twenty per cent, their prices will be cut so low that he will either lose his business or go broke on low prices." Says these same conditions existed both in Kansas and Missouri.

Says the Waters-Pierce employees got information of all his shipments out of Springfield except carload shipments. He knows of no instance where Waters-Pierce employees got his order countermanded.

On cross-examination:

Started to work for Consolidated Tank Line Company in 1889 at Wichita. Stayed there five years and then went to Topeka
249 and stayed there four years. Says he resigned voluntarily, but had had some trouble with the company. Says he left in 1897—from 1889 to 1898.

He first started in the independent business at Topeka, run there for about eight months and then went to Joplin.

Says he has from three to five thousand dollars invested in his Joplin station and about the same at Springfield. His annual sales are about forty thousand dollars. The business has increased yearly and grown into that amount. Having small means he could only do a limited business and not become antagonistic to the large

companies. Says he sells under the regular market of the Standard Oil Company—they do not maintain their regular market price in this territory.

Says he sells regardless of the prices of the Waters-Pierce Oil Company—holds his market at what he can afford. When prices get so low that he cannot sell except at a loss, he will not sell—two or three different times he has locked up his tanks and waited for prices to come back. When they get the business they raise the prices. To illustrate, he says they have sold in the Springfield market for nine cents all summer—they have now advanced to ten cents. At this point, Joplin, they have sold at nine and a half cents and have now advanced to ten and a half. Says his price has been ten cents for several months and is still ten.

Says he sells some Kansas oil, but largely Pennsylvania oil, which is superior because better burning oil.

Palicene of Schofield, Shurmer & Teagle was a Pennsylvania oil and superior to the Western oil. Many customers want the Pennsylvania oil because of its superiority. The Republic got trade on the strength of this brand of oil and because it was believed to be an independent company.

Says he will not say that the Republic Oil Company is dealing in high gravity Pennsylvania oil now. They built up a
250 reputation while in the name of Schofield, Shurmer & Teagle on high gravity Pennsylvania, but he will not say they are selling that now.

Says his success is not due altogether to the fact that he handles Pennsylvania oil. In some places a cheaper grade of oil is demanded. There is a greater demand for high grade oil at Springfield than at Joplin.

He sells in a teritory from Springfield Southeast as far as Thayer, as far East as Richmond and West to Fort Scott. George P. Jones and St. Louis Oil Company sell the same oils and they come down into his territory—they do little this far down because of the excessive freight rates.

As to railroad rates he says that the roads in the past have granted a low commodity rate on tank cars which has enriched the Standard Oil Company. The rate to the local shipper or small shipper has been excessively high in Missouri, being third class, while the commodity rate is a great deal better than fifth class.

No one in his territory has tank stations except himself and Waters-Pierce Oil Company. There is competition by barrel shipments from many companies, but excessive freight rates will not allow them to do much in that way. So far as illuminating oils are concerned he practically has no opposition except from Waters-Pierce Oil Company.

Says that at Springfield after Republic left there Mr. Ackert, manager of Waters-Pierce Oil Company, proposed to him that the Waters-Pierce Oil Company would buy out his business, let him work for the company and continue to run the business in his name and take care of the dissatisfied trade, but he did not accept the proposal.

Says he operates tank wagons. This system of tank stations and wagons is an advantage to either the operator or consumer. The advantage is the oil comes on a low commodity rate in carloads, which no dealer can secure in local shipment lots. The rates were forty-five cents a hundred on local shipments from St. Louis
251 to Springfield and sixteen cents a hundred in carloads. His experience has been it has been to the consumers' interest where there was an independent company operating and was not to the advantage of the Waters-Pierce or Standard where the independent was operating. They measure the freight rate. For example, the commodity rate in tank cars may be as low to one point as another, yet if the independent doesn't have a tank station at that point, their price may be from one, two, three or five cents a gallon more at that point where there is no competition than it is where the competitor operates with the tank stations. It is much the most convenient way of doing business to the dealer. And says he could not remain in business in the city without his station. Both the Standard Oil Company and the Waters-Pierce handle their oils in cities by means of the tank stations and wagons.

D. M. John.

(Pages 905 to 918 Inclusive.)

Lives at Joplin and is now manager of the Interstate Oil Company at Joplin.

From February, 1890, to April, 1898, he sold oil in Joplin under his own name. Says Mr. Lasar, manager for the Missouri division of Waters-Pierce Oil Company, asked him to start this business. The Waters-Pierce agent at this place, Mr. Lyons, furnished him the money to put up tanks, buy a team and wagons and all other necessary equipments and he sold oil in his own name in the city of Joplin. Managed and represented the business as his own. It did not belong to him and he was working on a salary. He was doing a retail business. After selling illuminating oil this way for about five years he took charge of a lubricating tank wagon and delivered to the mines—this was also for the Waters-Pierce Oil Company, but done in his name.

252 He did not go to Galena to sell because he was told by the agent that he was to sell only in Missouri. There are mines at Galena, but he did not go there to sell lubricating oil. When he quit he turned everything over to the Waters-Pierce Oil Company. Says he was handling Waters-Pierce oil and selling under their brands. He turned over to the Waters-Pierce a part of the proceeds of his sales after deducting his expenses and salary.

Since he has been working for the Interstate Oil Company he tried to buy oil from the Standard at Galena and they refused to sell him.

While he was selling for Waters-Pierce Oil Company he got his oils from their tank station and invoices were rendered him.

W. E. Harmon.

(Pages 918 to 925 Inclusive.)

Lives at Joplin and is now connected with the Missouri Pacific Railroad. From April 14, 1904, to November 1, 1904, he was cashier in the office of Waters-Pierce Oil Company at Joplin under J. H. Lawler, the local agent.

Their territory did not extend across the line into Kansas, but they sometimes shipped oil across and run the risk of getting caught by the Standard Oil Company. When they were caught the matter was handled from St. Louis. He does not know whether Waters-Pierce Oil Company lost the sales or not.

Says orders came from Standard Oil territory to Waters-Pierce Oil Company for oils. In such cases the orders were generally sent to the nearest Standard agent in the territory from which they came. Says they sometimes got orders which had been sent to the Standard Oil Company by persons living in Waters-Pierce territory and filled them.

253 Says Waters-Pierce Oil Company got information of competitive shipments about twice a week, and this information was reported to St. Louis.

A. D. Rader.

(Pages 925 to 927 Inclusive.

Lives at Cagle in this state, five miles wewst of Joplin.

Says that in 1895 or 1896 he tried to get the agent at Galena, Kansas, to deliver oil to him at Cagle, but he refused to do so, but sold him oil and he hauled it himself.

W. L. Stephens.

(Pages 929 to 930 Inclusive.)

Lives in Joplin and was formerly a salesman of the Interstate Oil Company—that was in about the year 1900, and he was with them fifteen months.

He sold in Joplin, Webb City, Oronogo and Galena. He met the Standard in competition at Galena and the Waters-Pierce in Missouri, but did not meet them both in the same place.

G. J. Steigerwald.

(Pages 931 to 1005 Inclusive.)

Lives in Cleveland, Ohio, and is now with F. G. Clark Company, wholesale oils, as a traveling representative. Says he sells in Middle,

Eastern, Southern and Southeastern, practically everywhere except the extreme West, Northwest and Eastern section of the country. Names twelve states that he travels in, including Missouri. This company has refineries located at Warren, Pennsylvania. He sells altogether to the jobbers.

Says he has been in the oil business since 1891 and begun
254 with Schofield, Shurmer & Teagle at Cleveland, Ohio. He next had a position with the Scio Refining Company at Scio, Ohio. The members and employees of Schofield, Shurmer & Teagle were the principal owners of that company. Ben W. Brown was connected with the Scio Company. Witness had general management of the company. His connection ended with this company when it was sold to George B. Wilson on June 1, 1901. Within a few months thereafter this refinery was dismantled. Most of their products had been marketed through Schofield, Shurmer & Teagle.

Then he took a position with the Republic Oil Company at Cleveland, Ohio, as purchasing agent and traffic manager. His duties were chiefly to look after the order and supply department, make general purchases, look after the movement of tank car equipment, and incidentally some detail work for general manager. W. C. Teagle was general manager and vice-president; he had been a member of the firm of Schofield, Shurmer & Teagle.

Witness went to Cleveland June 3, 1901, with the Republic. It took the property of the Scio Refining Company also.

George B. Wilson was the first president of Republic Oil Company, L. H. Turrell, secretary, and J. R. Taylor, assistant secretary. The Cleveland Refining Company was also turned over to the Republic Oil Company.

The Scio Refining Company's properties were inspected before purchase by Mr. Van Dyke and Mr. Irish of Lima, Ohio. Afterwards he learned that Van Dyke was connected with the Solar Refining Company at Lima.

The crude oil which was received under contract at the time the Scio plant was dismantled was turned over to the Ohio Oil Company, a Standard Oil interest.

The unfinished products of the Cleveland Refining Company were loaded into cars and carded to the Standard Oil works at Cleveland.

255 He remained with Republic Oil Company until April 15, 1904. He stayed at the Cleveland office practically all the time—took occasional trips to different parts of the country trying to sell goods or adjusting some matters at stations. He was familiar in a general way with the business.

W. C. Teagle stayed at Cleveland up to October, 1903, in the position of vice-president and general manager. Then he went to New York and became connected with the Standard Oil Company, at 26 Broadway, as member of the export trade committee.

Schofield, Shurmer & Teagle were considered the largest marketers of oil in the country outside of the Standard Oil Company—the

largest independent dealer. They were active and vigorous competitors of Standard Oil Company.

There was no immediate change in the business of the Republic Oil Company after they took over the properties of Schofield, Shurmer & Teagle, Scio Refining Company and Cleveland Refining Company, until a year or a year and a half afterwards, then there was a decided change noticeable.

Instructions were given throughout the territory of the Republic Oil Company to represent it as an independent company—these instructions were given by W. C. Teagle, vice-president and general manager. They were to solicit the same trade that Schofield, Shurmer & Teagle had and any other trade that could be secured. There was what was known as "dissatisfied trade" or "prejudiced trade" that would not deal with the Standard Oil Company because it was supposed to be a monopoly.

The verbal instructions given were to the effect that they were to canvass chiefly the high class trade demanding better oil in quality than the ordinary trade marketed and to represent themselves
256 as active competitors of the Standard Oil Company, and to get trade handled chiefly by people outside the Standard Oil Company.

Republic Oil Company made reports as to its business to 75 New Street, New York City, C. L. Nichols, president. He succeeded George B. Wilson as president. 75 New Street is the back entrance to 26 Broadway, or the Standard Oil Building, New York City.

He was called to 26 Broadway in relation to a proposition offered by the Standard Oil Company. With reference to this proposition he saw W. C. Teagle and W. E. Beamas, who was a member of the export trade committee. Says he met a Wilson and a Taylor there. Nichols became president in the early part of 1902.

Says he has seen letters written or signed by George B. Wilson on letter-heads of Republic Oil Company, New York. At the time of his visit to New York Wilson was in the office of L. J. Drake in Standard Oil building. Drake was a member of the domestic trade committee. He was once connected with the Standard Oil Company of Indiana at Chicago.

Says his trip to New York about taking a position with Standard Oil Company was in 1903 and he went on a telegram.

When Teagle left Cleveland for New York one W. E. Judd of Winnipeg, Manitoba, became general manager.

When in 1903 he wanted to quit the Republic Oil Company, it was getting its oils chiefly from Standard Oil Company's refineries, Cleveland, Lima, Franklin and Whiting.

All orders for oil were placed direct from Cleveland—no orders were made through 75 New Street.

All stations in Missouri taken over by the Republic were continued for a time and then the one at Springfield was dismantled.

In a general way says he is familiar with the territory of
257 the Waters-Pierce Oil Company. He never found that company and the Standard Oil Company selling in the same territory.

The territory of the Republic Oil Company was practically coextensive with that of the Standard Oil Company.

Louis H. Turrell was secretary and treasurer of the Republic Oil Company at Cleveland from June 1, 1901, to the end of the year.

One Mr. Hardcastle worked for Republic at Cleveland. He came from Standard Oil Company at Albany, New York. When he quit he went back to the same company.

A Mr. Hart, chief clerk of the accounting department of the Republic, was formerly connected with Standard Oil Company of Indiana.

The word "transfer" as used in the business meant being transferred from one office to another or from one position to another, and the same term is sometimes used between kindred interests or affiliated interests.

L. J. Drake, Jr. came from Standard Oil Company to the Republic while he was there. When Turrell left he went with Standard Oil Company at Sioux City, Iowa.

Cleveland Refining Company of Cleveland belonged to the Teagle family. It was a marketing field and sold to Schofield, Shurmer & Teagle.

Cleveland Refining Company plant was dismantled in July and August, 1901, and the Scio plant in September and October, 1901.

When the Republic Oil Company first began business they went out after all business in sight regardless of who it belonged to, and this continued for about a year and a half or until restrictive instructions were issued, which meant that the agents were told that where the business belonged to Standard Oil Company no active effort was to be made to get it. Both the general manager and witness gave such instructions. Says the Waters-Pierce
258 Oil Company's business was treated just the same as the Standard's business.

Says he left Republic Oil Company without any feeling against any one and there had been no trouble.

States that he would say that the Republic Oil Company was more aggressive in competing with the Waters-Pierce than it was with the Standard Oil Company. The station at Springfield was removed in order to remove competition from that territory. Just before this station was moved Mr. Teagle had been to 26 Broadway and immediately on his return instructions were given to remove it.

The Republic Oil Company procured Pennsylvania refined oils from the independents for nearly two years. Then instructions were given to place practically all orders for Pennsylvania refined oil with the Atlantic Refining Company at Franklin, Pa., which is a well known Standard Oil Refinery.

Local agents or field managers were very often called to Cleveland and there they were instructed by the manager.

Says he thinks the Republic managers at St. Louis were given more leeway than some other managers, so that they could get more business at that point, regardless of who it belonged to.

He was present at field managers' meetings at Cleveland when instructions were given by the general manager. Mr. Meyer was pres-

ent at those meetings. General instructions were given and different questions were brought up for the good of the business. At the last meeting there were instructions given relative to respecting the business of the "largest competitors" and following up the outside high class business, or dissatisfied trade.

Says there is more competition on the lower grade of oils. The
independent refineries are chiefly located in the Pennsylvania
259 oil regions and have to cater more to the trade demanding
high grade goods. As the Standard Oil Company handles mostly low grade goods the independents are forced into the high class.

At the time the Republic started in business he received orders or instructions from New York to place orders for certain grades of refined oils with various Standard Oil refineries and in a general way gave the shipping directions by which they were to be routed. These orders came from the president of the company, who was located in the Standard Oil building, New York City.

The Pennsylvania oil is superior to the Western products.

At the beginning they bought practically all of their Pennsylvania oils from independent refineries. During the course of the year, after the expiration of six or eight months, they placed at least twenty per cent with the Atlantic works, a Standard interest, and before he left they bought their entire requirements of Pennsylvania oil from the Atlantic.

Low grade oils are manufactured largely by Standard Oil Company, and in order to retain gallonage and keep out competition, they will reduce the price on those particular grades so low as not to leave any profitable margin to independent jobbers—that is, over and above the cost to the independent jobbers from the independent refineries.

The refinery of his company is located at Warren, Pa., and sells as wholesale jobbers only. They sell at points in Missouri to the independent dealers only.

At a field managers' meeting, held in February, 1904, at Cleveland, when Heyer of St. Louis was present, the president instructed them all that they were to canvass, make particular efforts in increasing trade on palicene oil and go particularly after the trade
that would demand high grade goods in preference to the
260 ordinary oils on the market and to make particular efforts
against like jobbers in their territory. At this meeting the president stated that it was unnecessary to longer deny the identity of the Republic.

W. W. Waters.

(Pages 1006 to 1010 Inclusive.)

Edits a newspaper at New Madrid, Mo. In the spring of 1902 he ordered a gallon of oil for a gas engine he had in his office from the Standard Oil Company and directed the letter to that company at St. Louis, Mo. In due course of the mails he got a reply to his letter from Waters-Pierce Oil Company at St. Louis, merely stating

that they did not sell in quantities of less than ten gallons and that he could perhaps get it from their local agent.

The Standard Oil Company does not do business in southeast Missouri, but the Waters-Pierce Oil Company does business there.

H. R. Knollenberg.

(Pages 1010 to 1015 Inclusive.)

Lives in St. Louis and is traveling salesman for Mound City Oil & Supply Company and has been with that company for about seven years.

He was traveling salesman for Waters-Pierce Oil Company from 1893 to 1898 in Missouri, Indiana Territory and some points in Arkansas. His business principally was to look after the lubricating oil business, and he sold to any one he could. He never met the Standard Oil Company selling in the territory he sold in, but met other companies in competition. He was told as to territory, how far he could go and where not to go.

261 Says Waters-Pierce Oil Company business was divided up into territories, such as Missouri division, Texas division and Mexico division.

H. R. Knollenberger—Recalled.

(Pages 1018 to 1032 Inclusive.)

Prior to going with the Waters-Pierce Oil Company he worked for Vacuum Oil Company, Rochester, New York. He sold for his company in the southern part of Illinois and southeastern part of Missouri. In Illinois he met in competition the Standard Oil Company and in Missouri the Waters-Pierce Oil Company. Vacuum Oil Company went into the Standard Oil Company about 1893. When this occurred he was working under an annual contract which had ten months to run. During that ten months he worked a portion of the time in Illinois and a portion of the time in Missouri, but his salary was paid by Waters-Pierce Oil Company to the amount of his contract. Reports of oil he sold in Illinois were made to Standard Oil Company, outside of Belleville, and oils sold there were reported to Waters-Pierce Oil Company. It had that territory. Reports of sales made in Missouri were made to Waters-Pierce Oil Company. All the papers and records of the office of Vacuum Oil Company at its office in St. Louis were taken to the Office of Waters-Pierce Oil Company.

The business of Vacuum Oil Company in Illinois was transferred to Standard Oil Company and its business in Missouri was transferred to Waters-Pierce Oil Company, but the name of Vacuum Oil Company was discontinued.

But says all his work during the ten months his contract had to run was done under Mr. Lasar, manager of the Missouri division

of Waters-Pierce Oil Company, both in Missouri and Illinois.
262 Says that Vacuum oil was lubricating oil and the company handled no illuminating oil.

Says Mr. Lasar instructed him when he sold in Illinois to make his report to the agent of Standard Oil Company at East St. Louis.

Samuel Lederer.

Pages 1015 to 1018, Inclusive.)

Now lives in St. Louis. In about 1897 he was in Dexter, Mo., and was manager of the general store of Lederer & Richter. They bought and sold the oils of Waters-Pierce Oil Company. Waters-Pierce was the only company selling oil there then. A gentleman came there representing some other company and made up a car load lot among the merchants and shipped it in there. Says he notified the Waters-Pierce agent, and he said his company would stand by his firm if they would stand by the Waters-Pierce, and we agreed to do so. Says he was then paying fourteen cents for prime white and this new oil was sold to the merchants for twelve cents. His firm dropped oil to ten cents and it kept on coming down until it sold at five cents. There was no more competitive shipments there after this car.

(Pages 1032 to 1035, Inclusive.)

Certified copy of annual report of Republic Oil Company, of 75 New Street, New York City, to State of Michigan, showing its condition for year 1902:

Shareholders: George B. Wilson, 3,000 shares; Walter C. Teagle, 150 shares; James R. Taylor, 200 shares; Charles L. Nichols, 150 shares. Officers: C. L. Nichols, president; W. C. Teagle, vice-president; W. T. McKee, secretary and treasurer; J. R. Taylor, assistant secretary.

263 (Pages 1035 to 1038, Inclusive.)

Certified copy of annual report of Republic Oil Company, of 75 New Street, New York City, to State of Michigan, showing its condition for year 1902. Same shareholders and officers.

(Pages 1038 to 1041, Inclusive.)

Certified copy of annual report of Republic Oil Company, of 75 New Street, New York City, to State of Michigan, showing its condition for year 1905. Same shareholders and officers.

(Pages 1041 to 1044, Inclusive.)

Certified copy of annual report of Republic Oil Company, of 75 New Street, New York City, to State of Michigan, showing condition for year 1904. Same officers and stockholders, except that W. S. Judd takes the place of W. C. Teagle.

(Pages 1044 to 1048, Inclusive.)

Certified copy of annual report of Standard Oil Company, of Whiting, Indiana, to State of Michigan, showing its condition for year 1902.

Stockholders: W. H. Tilford, H. H. Rogers, J. D. Archbold, C. M. Pratt, J. A. Moffett, F. R. Barstow, H. M. Flagler, William Rockefeller, G. W. Stahl, and W. P. Cowan. Officers: W. H. Tilford, president; J. A. Moffett, vice-president; G. W. Stahl, secretary and treasurer. All are directors except Stahl.

(Pages 1048 o 1051, Inclusive.)

Certified copy of annual report of Standard Oil Company, of Whiting, Indiana, to State of Michigan, showing its condition for year 1903.

Stockholders: E. T. Bedford and Walter Jennings are substituted for William Rockefeller and H. M. Flagler. Officers same as above.

264 (Pages 1051 to 1055, Inclusive.)

Certified copy of annual report of Standard Oil Company, of Whiting, Indiana, to State of Michigan, showing its condition for year 1904. Same stockholders. Same officers, except that J. A. Moffett, became president and W. P. Cowan vice-president.

(Pages 1055 to 1062, Inclusive.)

Certified copy of Articles of Incorporation of Republic Oil Company as they appear on file in the office of Secretary of State of Missouri.

Showing: Capital stock to be $350,000, and $60,000 of same invested in Missouri.

Organized under the laws of New York State on June 4, 1901.

The capital stock was divided into 35,000 shares of $100 par value each.

The shareholders were George B. Wilson, New York City, 3,000 shares; F. A. Turrell, New York City, 300 shares; James R. Taylor, Mount Vernon, New York, 200 shares.

(Pages 1062 to 1067, Inclusive.)

Certified copy of Articles of Incorporation of the Standard Oil Company of Indiana as they appear in the office of the Secretary of State in Missouri. Filed in said office of Secretary of State of Missouri January 21, 1897, and certificate to do business issued on that date. Shows that the company incorporated on June 11, 1889, under the laws of Indiana. Signed by A. M. McGregor, George H. Vilas, W. H. Tilford, F. R. Barstow and W. P. Cowan, and acknowledged in New York City, all except Cowan, who acknowledged in Illinois, and the same parties made directors. On September 7, 1899, James A. Moffett was vice-president.

265 (Pages 1068 to 1070, Inclusive.)

Certified copy of Articles of Incorporation of Waters-Pierce Oil Company, filed in the office of the Secretary of State of Missouri, on May 29, 1900. Showing that the company was organized on May 28, 1900, with a capital stock of $400,000, divided into four thousand shares of the par value of one hundred dollars each.

Shareholders: Henry Clay Pierce, 3,999 shares; Andrew M. Finley, one share; John P. Gruett, one share; Charles M. Adams, one share; John J. Johnson, one share, all of St. Louis, Mo. The same parties are named as the first board of directors.

(Pages 1071 to 1074, Inclusive.)

Certified copy of Charter of Consolidated Tank Line Company, as same appears in the office of Secretary of State of Missouri, filed July 3, 1891. Organized and incorporated under the laws of Ohio on January 18, 1878, capital stock, $200,000, each share of the par value of $100. Signed by Alex. McDonald, Eugene Zimmerman and James McDonald.

(Pages 1075 to 1081, Inclusive.)

Certified copy of charter of Standard Oil Company of Kentucky as it appears on file in the office of the Secretary of State of Missouri. Filed May 10, 1892, and affidavit of retirement from the state filed January 21 1897. Incorporated under the laws of Kentucky on October 7, 1886. Incorporators: W. H. Tilford, New York; W. T. Jordan, Louisville, Kentucky, and L. T. Rosengarten of Louisville. Capital stock, $600,000—one hundred dollars par value of each share. Directors: W. H. Tilford, Geo. H. Vilas, H. H. Rogers, J. D. Archbold and W. P. Thompson. Officers: W. H. Tilford, president; Geo. H. Vilas, vice-president; W. T. Jordan, secre-
266 tary; L. T. Rosengarten, treasurer. Amendment thereto on April 1, 1902, increasing stock to one million dollars, and C. M. Pratt was president at that time.

(Page 1081.)

State vs. Standard Oil Company, 49 Ohio State Reports 137.
State vs. Standard Oil Company, 61 Ohio State Reports, 520.

Frank R. Northrop.

(Pages 1088 to 1123, Inclusive.)

Now lives at Des Moines, Iowa. In 1892 he began the oil business with Schofield, Shurmer & Teagle in Iowa. Went to St. Louis in September, 1893, with same firm. Begun in St. Louis as their chief clerk and then became their manager in 1896 and continued as manager up to 1901. Republic Oil Company succeeded Schofield, Shurmer & Teagle, and he became manager at St. Louis of the Republic

and continued with them there until July, 1902; then he went to Chicago and became manager of Republic there.

In St. Louis Waters-Pierce Oil Company had tank stations both in that city and East St. Louis. The firm of Schofield, Shurmer & Teagle were active competitors of Waters-Pierce. Met the Standard Oil Company in Illinois and at Hannibal, but did not meet that company in St. Louis. Schofield, Shurmer & Teagle had tank stations in Missouri at St. Louis, Kansas City, St. Joe, Springfield and Clinton, and sold anywhere in Missouri that they could get customers. Never found the Standard Oil Company and Waters-Pierce Oil Company doing business in the same territory in Missouri. The firm of Schofield, Shurmer & Teagle was the principal competitor of the Standard and Waters-Pierce in Missouri—it was the largest and most aggressive. They sold to Republic Oil Company on June 1,
267 1901. A brother of R. P. Tinsley of Standard Oil Company came to inspect inventory. Walter Teagle, who had been with the old firm, continued with the Republic Oil Company.

Letter sent to witness at St. Louis dated June 12, 1901, signed by Republic Oil Company, W. C. T., denying newspaper reports that Schofield, Shurmer & Teagle had sold to the Standard, and alleging that the business of Schofield, Shurmer & Teagle and Cleveland Refining Company had been consolidated and would be continued under the name of Republic Oil Company, and authorizing him as manager to convey such information to his customers along the line suggested as he thought proper.

When Republic Oil Company begun business there was some changes made in methods of keeping books. Says this company was left an independent firm; they were to do no cutting as to the companies called their "competitors," that is, Waters-Pierce Oil Company. He followed the prices made by Waters-Pierce Oil Company. Other companies were designated "Independents," and he was to get right after them and get every bit of their business, and he could use his own discretion in dealing with them. Says he got the major portion of his oils from Whiting, Indiana, the Standard Oil Refinery, and the shipments of oil to his company was billed as gallonage only. Says after he got started in it all came from Whiting.

His instructions to salesmen was to show them Mr. Teagle's letter stating that his company was not connected with the Standard Oil Company in order that they might communicate the information to the trade.

While in St. Louis with the Republic he reported to Cleveland, but while with that company at Chicago he reported to W. C. Teagle at 75 New Street.

L. H. Turrell, before he became connected with Republic Oil Company, was connected with Standard Oil Company at Des
268 Moines. Then he was at St. Joe, and afterward became secretary of Republic. He was with the Republic only a short time and then went to Dubuque with the Standard Oil Company.

Knew Von Harten, who was manager of tank wagons in St. Louis while he was with Republic Oil Company there. His company (Republic) run six tank wagons in St. Louis and had six tanks.

Von Harten was in the habit of calling on him in a social way and would inform him a day or two ahead when there would be a change in the price of oil. Witness would then follow their prices. This continued during all the time he was manager of Republic Oil Company in St. Louis.

Says he established the business in Chicago for Republic Oil Company—the Standard was doing business there. At that place says he had instructions to get business from independents and be very careful about competitors' business, and by "competitor" says he means the Standard Oil Company. But says they also had to get after the business of "competitor" in order to make some showing.

Says about the time of sale of business of Schofield, Shurmer & Teagle the Republic Oil Company, Ed Shurmer and a Standard Oil man from Louisville came to St. Louis and looked over the property in order to see what it was.

Both the Standard Oil Company and Waters-Pierce Oil Company had tank stations in East St. Louis.

Says Schofield, Shurmer & Teagle at St. Louis sold in certain towns and places—his traveling men would be instructed where to go. His traveling men's territory was staked out on maps and reference would be made to that to find where they went. The major portion of the oils sold by this firm came from Cleveland—got some from Corn Planter Refining Company and some from other places. Their leading brand was palacine.

The Waters-Pierce Oil Company in St. Louis sent out to the
269 trade and dealers regularly, card lists of prices which were followed by all the oil dealers there. His information from Von Harten was received in advance of sending out these cards. Says he had no agreement with Von Harten—he would simply tell him what the prices were to be and he would follow them. When with Schofield, Shurmer & Teagle he would not be notified in advance, but would have to find out the prices of Waters-Pierce. When with last named firm they were forced to follow price of Waters-Pierce and when with the Republic he had instructions to follow their prices. These instructions came from Mr. Teagle.

F. E. Lyman.

(Pages 1123 to 1125, Inclusive.)

Worked for Consolidated Tank Line Company and Standard Oil Company of Kentucky from 1891 for two years. Reported to Kansas City office. While there he was instructed as to territory of Waters-Pierce Oil Company and told to forward orders received for oil from their territory to them at St. Louis, Mo.

(Pages 1127 to 1131, Inclusive.)

Certified copy of annual report of Standard Oil Company of Indiana, to State of Michigan, for year 1905.

Stockholders as follows: John D. Archbold, New York, 1,801 shares; F. Q. Barstow, New York, 1,001 shares; W. P. Cowan,

Chicago, one share; J. A. Moffett, New York, 1,489 shares; C. M. Pratt, New York, 1,701 shares; H. H. Rogers, New York, 2,001 shares; Geo. W. Stahl, Chicago, two shares; W. H. Tilford, New York, 2,001 shares; E. T. Bedford, New York, one share; Walter Jennings, New York, one share.

Officers: J. A. Moffett, president; W. P. Cowan, vice-president; Geo. H. Stahl, secretary and treasurer.

270 (Pages 1131 to 1135, Inclusive.)

Certified copy of annual report of Republic Oil Company, to State of Michigan, for year 1905. Stockholders: Frank Wilson, Orange, N. J., 3,000 shares; C. L. Nichols, Plainfield, N. J., 150 shares; W. E. Judd, Cleveland, Ohio, 150 shares; J. R. Taylor, Mt. Vernon, N. Y., 200 shares. Officers: C. L. Nichols, president; W. E. Judd, vice-president; W. T. McKee, secretary and treasurer; J. R. Taylor, assistant secretary.

W. T. McKee.

(Pages 1148 to 1157, Inclusive.)

Lives at Cleveland, Ohio, and has lived there since 1902. Prior thereto he was an accountant and traveling most of the time for Wade Hampton, who was general auditor of Standard Oil Company with his office at 26 Broadway, New York. He audited books of station agents and managers wherever he was sent.

In January, 1902, he became secretary and treasurer of Republic Oil Company and still holds that position. C. L. Nichols is the president of the company.

Cleveland, Ohio, is the distributing office of Republic Oil Company, but the home office is at the office of the president at 75 New Street, New York City.

While he was traveling auditor under Wade Hampton he audited the books of Standard Oil Company at Kansas City as well as those of Waters-Pierce Oil Company at St. Louis.

Stock book of Republic Oil Company produced and offered in evidence. This book has been kept at 75 New Street, New York City, the home office.

271 Stock book shows:

No. Cert.	Shares.	Originally issued to—	Now held by—
1.	3000	George B. Wilson.....	Frank Wilson
		(150).....	C. L. Nichols
2.	300	Lewis H. Terrell (150).....	W. E. Judd
3.	200	James R. Taylor.....	James R. Taylor

Frank Wilson is assistant to W. G. Rockefeller, who is treasurer of Standard Oil Company of New York.

C. L. Nichols became president of Republic Oil Company in 1902

nd is still president. Prior thereto he was connected with Mr. Drake, who was in charge of some department at 26 Broadway.

James R. Taylor is at 26 Broadway, but he does not know his connection there.

When he went to Cleveland, W. C. Teagle was vice-president and general manager of Republic Oil Company. He is not connected with Republic now, but is at 26 Broadway.

W. E. Judd is located at Cleveland, Ohio, and gives his entire time to the Republic Oil Company.

(Page 1157.)

It is here admitted by Mr. Eddy of counsel for Standard Oil Company and Republic Oil Company that the stock held in the Republic Oil Company by W. E. Judd, Frank Wilson and J. R. Taylor is held for the Standard Oil Company of New Jersey.

Says he audited the books of Waters-Pierce Oil Company eight or nine years ago. Audited them twice; once alone, and once he assisted C. W. White, who worked under Wade Hampton, and both times under the direction of Hampton. Has not audited the books of that company since.

272 *Louis H. Turrell.*

(Pages 1169 to 1252, Inclusive.)

Lives at Detroit, Michigan; is a public accountant. He went there in October, 1903. Was at Dubuque, Iowa, from March, 1902, to October, 1903. Prior thereto he lived at Cleveland, Ohio, and he was there from June, 1901, to January, 1902. He was at St. Joseph, Missouri, from July, 1892, to 1901, when he went to Cleveland. And prior to that was at Des Moines, Iowa. At Des Moines he was with Standard Oil Company and became connected with that company in November, 1890. Alexander McDonald was president of that company. He was with Standard Oil Company at St. Joseph, also. The headquarters were changed while he was at St. Joseph, from Cincinnati, Ohio, to Chicago, Ill. L. J. Drake was the general manager at Chicago. He started in at St. Joe as cashier and was chief clerk when he left.

He left St. Joseph and went to New York City to become an incorporator in a new company. Went at the request of his superiors. Went to 26 Broadway and met J. A. Moffett, who told him a deal was on foot for the purchase of Schofield, Shurmer & Teagle and Cleveland Refining Company by Standard Oil Company. If the deal went through he wanted him to go to Cleveland and look after the accounting end of the business, and that he, witness, would be secretary and treasurer of the new company and one of the directors. Then, after this conversation, he went to Cleveland.

At Cleveland he was first informed that the Federal Oil Company had been formed and that he was one of the directors, and he commenced arrangements to install a system of accounting for the new company.

Shortly after he was called back to New York City and saw Mr. Moffett, who told him the deal had been closed and asked
273 him to go see Mr. Dodd, their attorney, and Mr. Bemis. Dodd showed him the Articles of Incorporation of Republic Oil Company, who asked him to sign his name to them in the name of F. A. Turrell, that having been written in the body of the paper, which he did. This was not his name, and he had never used these initials, but he was told that it would make no difference. James R. Taylor and George R. Wilson were seen by him at this time.

Mr. Dodd, in a general way, cautioned him to remember that he was an officer of Republic Oil Company, and that he was not supposed to know much outside of that. He was asked during this visit if any one at Cleveland, Ohio, knew him as a Standard Oil man, and he replied that he was a perfect stranger there.

Says he did not acknowledge the Articles of Incorporation before Doremus, Notary Public, as certified.

Says the allegation in the Articles of Incorporation that he resided in New York City is a mistake, as he had never lived there—had lived at St. Joseph, Missouri, for nine years immediately prior thereto.

George B. Wilson, one of the incorporators, was chief clerk of Standard Oil Company of New York, and he met him at 26 Broadway. James R. Taylor was private secretary to H. M. Tilford, who was connected with Standard Oil Company as a member of the domestic trade committee.

Shortly after Republic Oil Company was organized, the stockholders held a meeting at 26 Broadway in H. M. Tilford's room. Says but little was done—they did what Mr. Tilford directed to be done. They elected officers: Wilson, president; Taylor, assistant secretary, and himself, secretary and treasurer. Held another meeting of the directors—they were all directors. Mr. H. M. Tilford was always present and directed what was to be done. No outside person except Mr. Tilford was present.

274 Says he paid nothing for the 300 shares of stock held by him. Does not know what salaries Wilson and Taylor got. As a member of the board of directors he never knew of any money being paid in by the original incorporators.

When he went to Cleveland the second time as secretary and treasurer of Republic Oil Company he made arrangements to install an accounting system.

The firm of Schofield, Shurmer & Teagle had been active competitors of Standard Oil Company at St. Joseph. He also learned that they had a tank station at Kansas City and Springfield.

When Republic Oil Company began business, two men were sent out by Wade Hampton from New York to make an inventory of the properties. Hampton was general auditor of Standard Oil Company. Their inventory was to be the basis on which a settlement was made with Schofield, Shurmer & Teagle.

The Republic purchased at the same time the properties of Schofield, Shurmer & Teagle, Cleveland Refining Company and Scio Refining Company.

When final settlements were made for those properties part was paid in cash and part by notes.

Says they were given to understand that they must not use the same forms of accounting as the Standard, and were instructed to represent that the Republic Oil Company was an independent company. Such instructions were given him by James Moffett, H. M. Tilford and W. E. Bemis.

Mr. Bemis suggested that he get a Standard Oil man to help him install a system of accounting, and he got Mr. Hart of the Standard Oil Company of Chicago. Also sent him H. C. Hardcastle from Standard at Albany to help install a system of keeping record of stock.

All communications to the president of the company were addressed to 75 New Street, New York City—the back entrance to 26 Broadway.

275 L. C. Nichols was chief clerk of Walter Jennings, who was a member of the domestic trade committee at 26 Broadway.

R. P. Tinsley was at the head of the accounting department at 26 Broadway.

When he left Cleveland in January, 1902, he went to Sioux City, Iowa, with Standard Oil Company, and reported to Chicago. Mr. Nichols, president of Republic, wrote him a letter requesting him to go to Sioux City.

Says his certificate of stock in Republic Oil Company was not kept in his possession. It was at the home office, 75 New Street.

When he went to Sioux City he was requested to cancel his stock certificate.

(Page 1192.)

Letter from C. L. Nichols to witness, dated February 14, 1902, requesting him to sign as secretary certain certificates of stock, and to sign an assignment in blank of one in his name. The certificates were enclosed in the letter and were returned by witness to Nichols after he had complied with Nichols' request.

Says the general instruction to employés of Republic Oil Company were to go after the trade on high-class grades of oil and not to interfere with regular Standard Oil business. They were to push the sale of palacine over and above everything else. The hardest competition was on high grade oil. Any trade the Standard was enjoying without trouble they were to let alone—they were to work for the class of trade the Standard could not get or had difficulty in getting. The Republic was to go after the independents as hard as it could. Another object was to go after a class of trade that was prejudiced against the Standard.

Shortly after the Republic Oil Company was organized, the Cleveland Refinery and Scio Refinery were dismantled and were not operated any more.

276 During the time he was with Republic, it got oils from Standard Oil Company at Cleveland, Standard Oil Company at Whiting, Atlantic Refining Company at Franklin, Pa., and some through a broker at Oil City. Oil would be ordered through the Cleveland office or through the president at 75 New Street.

Whenever he went to 26 Broadway and wanted to see Mr. Tilford, he would always find Mr. Taylor in his office and through Taylor he would get to see Tilford. Never met the president, Wilson, except when they held board meetings.

When Nichols became president a cash statement was reported to him at 75 New Street. Saw Nichols when he would go to 26 Broadway, in Walter Jennings' office as his chief clerk.

Mr. Tilford was at first the directing agency of the Republic and after Nichols became president then Jennings took his place—Tilford's place.

While Wilson was president he would see Tilford about the business of the company and when Nichols became president he would see Jennings about its business.

As a general thing those in authority located at 26 Broadway had no title.

The domestic trade committee was located at 26 Broadway and had charge of the sale of oils in the United States. It was divided up and each member had a territory to look after and reports from that territory were made to him.

Concerning the accounting department of the Republic Oil Company he consulted with the men at 26 Broadway.

While at St. Joseph, working for the Standard Oil Company, the first head office was at Cincinnati, then it was changed to Chicago. The company with head office at Chicago was Standard Oil Company of Indiana. Prior to that he cannot say positively
277 whether the company was of Kentucky or Ohio. There was nothing on letter-heads or vouchers to indicate what State the company was organized in, just "Standard Oil Company."

Says P. C. Cranshaw, general manager at Chicago, requested his resignation. Gave no reason other than it had become necessary to let some one out of prominence. He had no trouble with the company. His feeling against the company was not real good in view of such treatment.

Says he communicated with General Hadley and offered his services to testify. The reason he did this, he says, was because he learned from the newspapers that there was a misunderstanding in regard to the incorporation of the Republic Oil Company. He considers also that it was a duty that he owed the public to testify.

Says that in May, 1901, at St. Joseph, he heard the manager there, Seth C. Drake, talking over the long-distance 'phone with L. J. Drake at Chicago.

Seth Drake turned from the 'phone and wanted to know if he was willing to go to New York and become one of the incorporators and directors in a *sub rosa* company they were forming. He answered "yes" and shortly after went to New York and became an incorporator of Republic Oil Company.

At the time the Articles of incorporation were signed, Moffett spoke of the address of witness being in New York and remarked that it was all right, nobody would know the difference.

Says he does not know how or when Wilson became president of

the Republic, nor did he know that he had been made secretary and treasurer until he was notified of the fact by Mr. Moffett.

When he was with Standard Oil Company at St. Joseph it got its oils from Whiting, Ind.

Virgil P. Kline, an attorney at Cleveland, Ohio, was a Standard Oil attorney and transacted the legal business of the Republic. Witness says he was referred to him by Attorney Dodd at 26 Broadway.

278 *Charles W. Schofield.*

(Pages 1287 to 1292, Inclusive.)

Has lived in Cleveland, Ohio, for twenty-six years. He was a member of the firm of Schofield, Shurmer & Teagle, but not an active member. He was not interested in the Cleveland Refining Company nor Scio Refining Company.

In the sale of the properties of the firm to Republic Oil Company, John Teagle represented the firm. He made one trip to New York during the negotiations with John Teagle. There they saw with reference to the sale, Alexander McDonald—met him at the Waldorf. Says he had some talk with McDonald about the sale. A proposition was submitted to McDonald, but he does not know whether that was the one accepted or not. Afterwards he was advised that the properties were sold—that the trade was made.

Daniel Shurmer.

(Pages 1292 to 1303, Inclusive.)

Lives in Cleveland, Ohio. He was formerly a member of the firm of Schofield, Shurmer & Teagle. The members were W. C. Schofield, Daniel Shurmer, Charles Scofield and John Teagle. Says he was an active member of the firm and was superintendent of works and looked after outside business. John Teagle was office man. They done business all through the West.

Says his firm was not connected with Standard Oil Company—they sold oil in competition with that company and sold anywhere they could. They quit business in 1901. He and Teagle had control of Cleveland Refining Company and Scio Refining Company.

In the sale of the properties of Schofield, Shurmer & Teagle,
Cleveland Refining Company and Scio Refining Company,
279 the firm was represented by John Teagle, who went to New
York and made the deal there.

Ed Shurmer.

(Pages 1304 to 1312, Inclusive.)

Lives at Cleveland, Ohio, and is a son of Daniel Shurmer. He was connected with the firm of Schofield, Shurmer & Teagle.

Sale of the properties of Schofield, Shurmer & Teagle took place

in the spring of 1901. Prior to the sale he went to New York
C. W. Schofield and had a talk with Alexander McDonald at
Waldorf concerning the sale of the firm properties. Says sale
made before he heard of Republic Oil Company.

John Burrows.

(Pages 1319 to 1355, Inclusive.)

Has lived in Oklahoma City, Oklahoma, for the past twelve y
He is now engaged in the wholesale oil business and has been
nected with the oil business for about twenty-five years.

He began with Waters-Pierce Oil Company at St. Louis a
twenty-four years ago. Then he was sent to Mississippi by that
pany to buy and inspect rosin and turpentine. Got pay part
Waters-Pierce Oil Company and part from Chess-Carley Comp
and when that company went out of business got a part from St
ard Oil Company. Went South in 1883 and was there eight
and these salary payments were made that way during those
years.

Then he was sent to Texarkana, Texas, as local agent for Wa
Pierce Oil Company. Then he was sent to Sulphur Springs, T
in same position, and then into Old Mexico, representing
280 same company. Next, in about 1893, he went to Oklah
City and took charge of the business of Waters-Pierce
Company.

On two occasions tank stations were put up at Oklahoma Cit
opposition to Waters-Pierce, but they did not last long. Wa
Pierce Oil Company put the price of oil down so low that they
not stay—put it down below cost.

The Anti-Trust Oil Company came in prior to 1900, and h
ceived instructions from Denison, Texas, the headquarters of his
ritory, to put oil down from day to day. He received no ins
tions from St. Louis, Mo., and all his reports were made to Den

At Texarkana he reported to Little Rock, Ark., the headqua
of that division.

At all points where he worked he was instructed to spot the
of competitors and make reports to division headquarters of all
side oils shipped into his territory.

Since 1900 there has been no competition in Oklahoma terri
except in lubricating oils. The Standard Oil Company has don
business in that territory that he knows of.

Says while in Texas his station business was audited by three
ferent auditors, from Little Rock, Ark., from Waters-Pierce
Company, St. Louis, and from Standard Oil Company, 26 B
way, New York City.

At Oklahoma City the same method was not pursued—mo
the auditing was done by auditors from St. Louis, but there
never been a regular checking up of the office.

Republic Oil Company never *sold* oil in his territory.

Since 1900 has received letters at Oklahoma City addressed to Standard Oil Company. At first he forwarded them to Denison, Texas, headquarters. He was instructed to open such mail and fill orders for oil if any was wanted.

Says he received instructions that the International Harvester Company of Chicago, would furnish him with labels to be
281 put on certain oils and shipping instructions from them. He was to charge the gallonage of oils to home office account of Standard Oil Company. He was furnished by International Harvester Company with printed bills of lading, shipping tags, etc., and the oils were furnished and shipped accordingly by witness. The gallonage was charged to home office at Denison, Texas, account of Standard Oil Company.

Letters produced showing witness was discharged because of unsatisfactory services, although he claims he resigned. Also a letter produced written by him in which he asks to be reinstated. Denied that he had asked to be reinstated.

Says he wrote Hadley about his knowledge because Mr. Ebie, the local manager, had threatened to fight his business. Says he thought if he was going to fight him he would retaliate.

During the time he was with Waters-Pierce Oil Company at Oklahoma he got the majority of his oils from Whiting, Ind. It came in tank cars, either W. P. O. cars or U. T. L. cars. The oil was not paid for by his station. They sold prime white and crown gasoline.

(The testimony of this witness is largely hearsay and incompetent and is so colored by his feeling against the Standard Oil Company and Waters-Pierce Oil Company, clearly demonstrated, as to greatly weaken it.)

J. A. Brown.

(Pages 1356 to 1361, Inclusive.)

Now lives in Kansas City, Kansas. Says he was with Waters-Pierce Oil Company at Newkirk, Oklahoma, for about eleven years. He was agent then for them. This is about eight miles from Kansas line. His competition while there was from the National Oil Company, which sold some oil there. Had no competition with Standard Oil Company. He did not sell oil or solicit trade in the
282 State of Kansas, he had been instructed to not sell there and these instructions were still in force when he quit on October 1, 1904. He received orders which had been sent to Standard Oil Company by persons living in his territory and filled them. Most of these were received in the early part of his agency. These letters would come to him direct from the point to which they were sent at times and at other times from the head office at Denison. Denison was then the head office of this territory, and he reported there. About two years ago the head office was changed to Oklahoma City, and then he reported there. Most of his oils and gasoline came from Whiting, Indiana, in later years some came from Corsicana, Texas. Sold eupion and crown gasoline. Standard

never came into his territory. They had a station twelve miles away from Arkansas City, Kansas.

E. T. Hathaway.

(Pages 1361 to 1370, Inclusive.)

Lived at Oklahoma City since 1904. He began service with Waters-Pierce Oil Company June 1, 1878, at Denison, Texas. Prior thereto he had been with Chess-Carley Company at Louisville, Ky. Was at Denison until 1904, when the headquarters of Oklahoma Territory were moved to the latter place. The Standard Oil Company has not had any tank stations in Texas or the Oklahoma division since he has been with the Waters-Pierce, and he has done no business to any extent in those places. Standard Oil Company has stations at Arkansas City and Wichita, Kansas. Waters-Pierce Oil Company did not sell in Kansas where Standard sold.

When Waters-Pierce Oil Company was reorganized in May, 1900, he was discharged by the old company and at once re-employed by the new company. There were no changes made in the business methods. Says everything went along just the same. He,
283 as manager at Denison, discharged all his employés and re-employed them. No loss in salaries or pay of employés.

As manager he gave agents instructions to sell in their territory and no further.

Says he knows they filled orders for the International Harvester Company, charging the goods to the St. Louis office.

His orders for oil all went to St. Louis, and the oil was shipped sometimes from Whiting, Indiana, and sometimes from Corsicana, Texas.

In regard to International Harvester Company, says that he knew nothing about the arrangement of the St. Louis office. He simply filled the orders and charged the goods to Waters-Pierce Oil Company, St. Louis.

Says some orders from his territory to Standard Oil Company for oil were sent to his office and filed by the proper agent and collections made for same.

His division consisted of a part of Texas, Oklahoma and a part of Indian Territory. The division was divided up into agencies and each agent was assigned a certain territory, and all got their oil through orders to the head office of the division, and all accounted and reported to him.

J. W. Wagnon.

(Pages 1371 to 1375, Inclusive.)

Lives at Oklahoma City and is in the real estate business.

He quit the Waters-Pierce Oil Company in November, 1904, and had worked for that company twenty-five years prior to that time. For about ten years of the time he was assistant manager

Never knew of Standard Oil Company selling in Waters-Pierce territory. He was in the office at Denison, Texas, which was the division office, as assistant division manager. In August,
284 1904, the division office was moved to Oklahoma City and he went to the latter place.

He says that Burrows was a hard worker and a faithful employé and that his discharge was caused by a Mr. Wheeler, who was investigating the division at that time and was temporarily the higher authority. He was assistant to general manager in St. Louis.

A. C. Ebie.

(Pages 1376 to 1386, Inclusive.)

Lived in Oklahoma City since October, 1904. He is manager of the Oklahoma division of Waters-Pierce Oil Company.

Prior to coming here he was employed by Standard Oil Company at Newark, N. J.

A. V. Jockel came to Oklahoma City in December, 1904—he knew Jockel in Newark.

When witness was in Newark he was chief clerk of Standard Oil Company at that place—that was Standard Oil Company of New Jersey.

When he came here he made application for employment by Waters-Pierce Oil Company to Mr. McNall, at 26 Broadway, New York City. He is commercial agent of Waters-Pierce Oil Company.

The Republic Oil Company does no business in Oklahoma Territory.

After seeing Mr. McNall he next saw Mr. Finlay, president of Waters-Pierce Oil Company, in St. Louis. He also met Mr. R. P. Tinsley in St. Louis, whom he had seen in his office at Newark, and once at 26 Broadway. Tinsley had an office there, but he does not know what his title was, but thinks he was connected with the accounting department.

Jockel had been employed in the same office as witness at Newark.

Says he comes in competition with Standard goods in northern border of his territory, but they have no tank stations in the
285 territory. Says he recognizes that company as a competitor when it ships goods into his territory. Says there was some carloads shipped into his territory by Standard—at least so reported to him as being Standard goods.

Gets his goods from Neodesha, Whiting, and Chaison, but does not know what refineries are located at those points, but orders for goods are sent to St. Louis office.

Says they have confined their territory, and agents and solicitors do not go outside, but they have not issued any instructions not to. Says it would not be advisable to ship Oklahoma test goods into Kansas; their goods seldom pass inspection here and he sells higher grade of goods, judging from shipments coming in and are rejected by the deputy inspector—the test is higher in Oklahoma than in Kansas.

Says Jockel worked about two months here under witness and was then relieved because he was generally unsatisfactory, found to be negligent, untruthful so far as his general report was concerned regarding his work, and he could not give bond.

Says his arrangements to go to Oklahoma City were made and agreed on with Mr. McNall, including salary.

When he saw R. P. Tinsley in St. Louis, on his way to Oklahoma, he was acting as vice-president of Waters-Pierce Oil Company. C. P. Ackert is the general manager of Waters-Pierce Oil Company.

Says all his reports are made to the office in St. Louis.

(Page 1393.)

Admitted that orders for oil from Standard Oil Company territory sent to Waters-Pierce agencies were transmitted to Standard Oil Company, and orders for oil from Waters-Pierce territory to Standard Oil Company agencies were transmitted to Waters-Pierce Oil Company, and when such orders were so received by Waters-Pierce Oil Company they were filled and that company collected for the oil.

286 (Page 1394.)

It is admitted that reports on forms offered in evidence were made to R. H. McNall, commercial agent at Waters-Pierce Oil Company at 26 Broadway, New York City.

C. M. Adams.

(Pages 1395 to 1439, Inclusive.)

Stock book of Waters-Pierce Oil Company produced. Adams, as secretary, says it is his duty to issue stock whenever a transfer is made, sign it and attach the seal.

He is also treasurer of the company, and as such looks after its finances.

As such secretary and treasurer he attended to remittances, payment of bills, signing checks and various things of that sort.

Says they purchased oils from Standard Oil Company of Indiana, Galena Signal Oil Company of Franklin, Pa., Atlantic Refining Company of Philadelphia, and paid for all the oils so purchased. Says orders for oils were made direct to the refineries. The orders went out from his office.

As to bills due the Atlantic Refining Company, a charge was made and the checks sent to Mr. Howe, at 26 Broadway, New York City, he being some officer of the company located there.

When the question of salaries came up it was the custom for the vice-president, secretary and treasurer, to get together, make recommendations and send them to the pres-ent, if he was not here.

Says he went to 86 Broadway about two years ago by request, but does not remember who requested him. Says he discussed various

matters there concerning the Waters-Pierce Oil Company with Mr. Moffett and Mr. Tilford.

W. F. Taylor, an attorney at New York City, is a director of Waters-Pierce Oil Company.

287 Has seen M. M. Vanburen, who is a stockholder.

Of the four thousand shares of stock of Waters-Pierce Oil Company, 2747 shares stood in the name of M. M. Vanburen in March, 1905.

(Pages 1418 to 1422.)

Stock book of Waters-Pierce Oil Company offered in evidence. Capital stock, $400,000.

Cert. 1. For 1,000 shares, one hundred dollars each. Dated June 1, 1900, to H. C. Pierce. Assigned to M. M. Vanburen June 24, 1904. On back two $10 U. S. stamps cancelled Sept. 4, 1900.

Cert. 2. For 1,000 shares, one hundred dollars each. Dated June 1, 1900, to H. C. Pierce. Assigned to M. M. Vanburen June 24, 1904. On back two $10 U. S. stamps cancelled Sept. 4, 1900.

Cert. 3. For 748 shares, one hundred dollars each. Dated June 1, 1900, to H. C. Pierce; assigned July 12, 1904, 746 shares to H. C. Pierce, one share to R. P. Tinsley, and one share to Walter F. Taylor. U. S. stamps cancelled June 1, 1900, and U. S. stamps cancelled Sept. 4, 1900.

Says the assets of the old company were purchased from stockholders by the new company and paid for out of the earnings of the new company.

Both Mr. McKee and Mr. Backus came out and audited the books of Waters-Pierce Oil Company, but while they were doing so they were employés of that company. When they got through and were paid off they ceased to be employés of the company.

288 *Adams—Continued.*

(Pages 1446 to 1494, Inclusive.)

(Page 1455.)

Stock of Waters-Pierce Oil Company on March 29, 1905, was owned as follows:

Andrew M. Finley	1 Share
John D. Johnson	1 Share
C. M. Adams	1 Share
R. P. Tinsley	1 Share
H. C. Pierce	1248 Shares
M. M. Van Buren	2748 Shares

Owned June 1, 1900.

Andrew M. Finley	1 Share
John D. Johnson	1 Share
C. M. Adams	1 Share
J. P. Gruett	1 Share
H. C. Pierce	3996 Shares

Stock book of Waters-Pierce Oil Company prior to May 29, 1900, produced and witness Adams examined in regard to it.

Witness says that up to 1892 the trustees of Standard Oil Trust held 2747 shares of stock of Waters-Pierce Oil Company, and then that amount was issued to Standard Oil Company of New Jersey—the old certificate to the trustees being cancelled.

When the old Waters-Pierce Oil Company was dissolved on May 29, 1900, Standard Oil Company of New Jersey held 2747 shares of its 4000 shares of stock.

When the capital stock of old Waters-Pierce Oil Company was increased, in 1882, from $100,000 to $400,000, the Standard Oil Trust, for the first time, became owners of stock.

Letter from M. M. Van Buren to C. M. Adams, dated July 1, 1904, directing him to make dividend checks on stock standing in
289 his name payable to Seaboard National Bank, New York City, and since that time he has complied with Mr. Van Buren's request.

Receipt from H. C. Pierce for dividend on 3994 shares of Waters-Pierce Oil Company stock, dated June 16, 1904, amounting to $99,850.00.

Receipt No. 33, dated July 7, 1904, from M. M. Van Buren, by Seaboard National Bank for $68,650, being a dividend receipt on stock held by Van Buren.

Has been with Waters-Pierce Oil Company since its organization in May, 1878. It has been doing business in the same parts of Missouri since, but the volume of business has been very greatly increased. The number of ware houses, tank stations and agencies have been very largely increased in this state and elsewhere. Its facilities have been greatly increased and improved.

The company operates no refineries in United States, but manufactures axle grease and lubricating oils in St. Louis.

It has three petroleum refineries in the Republic of Mexico. Company also deals in naval stores, such as turpentine, rosin and tar.

The company purchases the largest part of refined oils handled in this country from Standard Oil Company at Whiting, Indiana. Lubricating oils also come from there and from Galena Signal Oil Company at Franklin, Pa. Also says they buy oils from points in Texas, Neodesha, Kansas, and Sugar Creek, Mo., and Atlanta Refining Company, Philadelphia, and Eclipse Works, Franklin, Pa.

Says he orders supplies of crude oil for Mexico from Atlantic Refining Company, Philadelphia, and they are shipped to Mexico by tank steamers.

In Mexico they have a refinery at Tampico, one at Vera Cruz and one at the City of Mexico.

For supplies for the various divisions in this country requisitions are made through the St. Louis office. For these oils invoices
290 are sent to St. Louis and paid from there.

The company keeps its bank accounts with National City Bank, New York, and Bank of Commerce, St. Louis. Eastern bills for crude oil and supplies are generally paid through the New York bank.

Generally paid field agents by drawing a checks for full amount of pay roll and have the bank draw checks in name of division manager who would indorse them to the parties entitled. This would be New York exchange. The agent at Joplin was paid in that way.

McNall was employed as commercial agent of Waters-Pierce Oil Company some three or four years ago. His duties are principally to buy crude oil and all kinds of supplies for Mexico, and to see to the shipping of them.

Says Sugar Creek refinery, and Neodesha refinery are Standard Oil refineries. Doesn't know that the Texas refineries belong to Standard Oil Company. As to Atlantic Refining Company, does not know its ownership, but pays for oils bought from it to its agent at 26 Broadway, New York.

Orders that go to McNall are mostly for goods other than oil and gasoline.

Says there was no dividend declared or paid by Waters-Pierce Oil Company in the year 1901.

Andrew M. Finlay.

(Pages 1949 to 1509, Inclusive.)

He is vice-president of Waters-Pierce Oil Company. His connection with this company began in May, 1878. He is a brother-in-law of H. C. Pierce.

First began as manager at Marshal, Texas. For the last eighteen years he has been connected with the company in St. Louis. When he first came to St. Louis he became superintendent of divisions—next became vice-president. Became a stockholder in 1890.

291 The company formed in 1878 was dissolved in May, 1900, and a new company organized under the same name. The business was conducted the same as before, except there was some change in the officers. He owned a share of stock in the old company and got one in the new company. As far as he knew the trouble in Texas was why the old company dissolved.

Says Mr. Van Buren, Mr. Adams, Mr. Pierce and himself became stockholders in the new company, but does not know the date on which Van Buren became a stockholder, but thinks it was about a year ago.

Up to 1904 he was vice-president and general manager of the company. Says he had correspondence with 75 New street. Says he may have been asked to come to 26 Broadway by Mr. Tilford and Mr. McNall. He went there, but can not fix the time, and saw both those gentlemen—that was three years ago.

(It is clear from this witness' evasive answers to questions that he, as vice-president and general manager of Waters-Pierce Oil Company, communicated with H. M. Tilford, at 26 Broadway, New York City, relative to salaries of officers and employés of said company.)

Says memorandums of changes in salaries were sent to Mr. Mc-

Nall, commercial agent, at 75 New street, for his general information and because he asked for it.

Prior to 1900 the company had no representative at 26 Broadway, New York City. Mr. McNall's duties were to purchase supplies for Waters-Pierce Oil Company.

Says they made accounting reports and sales which had to do with buying goods, to Mr. McNall. That reports on forms offered in evidence were made to McNall in order to aid him in discharging his duties, but further on adds that he did not know the purpose of furnishing such reports. These reports related to sales of oils, profits,
292 tank wagon deliveries, cost of barreling and marketing, stable expenses, home office expenses, rents, taxes, special salaries, in short, every detail of the business, as will appear from the form of reports in evidence.

Anthony V. Jockel.

(Pages 1514 to 1522, Inclusive.)

Lives in Brooklyn, New York. In 1904 he was bookkeeper for Standard Oil Company at its office in Newark, N. J.

At that time R. P. Tinsley was located at 26 Broadway. He received reports and transfers between other companies and Newark branch of Standard Oil Company. R. B. Backus was with R. P. Tinsley. They left soon after he went with Standard for St. Louis, and went with Waters-Pierce Oil Company.

He knew R. H. McNall at 26 Broadway, who represented Waters-Pierce Oil Company. Prior thereto he had been with Pratt Oil Company, located at that place. Says he changed from one company to the other about the time Tinsley and Backus went to St. Louis.

A. C. Ebie was chief clerk of the Standard Oil Company at Newark while he was there. One W. R. King was an officer of Standard Oil Company at 26 Broadway.

Mr. Ebie, during the year 1904, through E. E. Young, Mr. King and Mr. McNall, was transferred to the Waters-Pierce Oil Company. Mr. Young was manager of the Newark branch of Standard Oil Company.

Mr. Ebie went to Oklahoma City, Oklahoma, and took charge of business of Waters-Pierce Oil Company.

Witness was also transferred to the same place as Mr. Ebie. In November, 1904, Mr. Young sent him to 26 Broadway, New York City, to consult Mr. King. Mr. King introduced him to Mr. McNall. He and Mr. McNall came to terms and agreed. Before he left he was instructed by both Mr. Young and Mr. McNall never to mention the fact that he had known of or had been employed by Standard Oil Company.

293 Says he stopped at the St. Louis office of Waters-Pierce Oil Company and was instructed by Mr. Tinsley to bring up the Oklahoma office to a level with the Newark office, and to put in force the forms of reports used in the East. Also gave him about the same

instruction that he received before leaving Newark as to keeping close-mouthed.

Says he was at Oklahoma about two months.

Standard Oil Company did not sell in Oklahoma Territory, but the Waters-Pierce Oil Company carried a stock of Standard lubricating oils, but the packages were changed to Waters-Pierce barrels.

Says Waters-Pierce Oil Company, through its agents, claimed to be a competitor of the Standard Oil Company.

Says there was two other oil companies selling in that territory and that the Waters-Pierce Oil Company, at certain points, sold oils at a loss as against them.

H. C. Hardcastle.

(Pages 1563 to 1581, Inclusive.)

Now lives in New York City. Became connected with Standard Oil Company in the accounting department in 1891. Continued there for about eight years, and then went to Cleveland, Ohio, where he worked for Republic Oil Company.

He went to Republic Oil Company at Cleveland through Walter Jennings, who was on the domestic trade committee of Standard Oil Company at 26 Broadway. Says he went to see Jennings at 26 Broadway, and he told him he wanted witness to take a position with a subsidiary company. Then Jennings took him up to the office of W. H. Tilford at same place and Tilford told him they had just absorbed Schofield, Shurmer & Teagle and reorganized it under the name of Republic Oil Company and wanted to know if he
294 would go to Cleveland to work for the latter company. Salary was agreed on and he was told by Tilford that when he went there it was not to be known that he was ever connected with Standard Oil Company.

He found that C. L. Nichols was president of Republic Oil Company, who had been secretary to Walter Jennings. Nichols kept an office at 26 Broadway. Walter C. Teagle was then vice-president of Republic Oil Company—he is now located at 26 Broadway and is a member of the export trade committee of Standard Oil Company.

W. T. McKee was auditor for Republic Oil Company. He was, prior thereto, an auditor of Standard Oil Company.

Says field managers got general instructions from the Cleveland office to represent to the trade that the company was independent and a competing company of the Standard Oil Company.

Says he made a trip through the states in which Republic Oil Company sold oils, including Kansas City and St. Louis, to install its stock system employed in the state of New York and other states by Standard Oil Company.

Reports of the business of Republic Oil Company were made to C. L. Nichols, 75 New street, New York City, being the rear entrance to 26 Broadway.

He stayed with Republic Oil Company about four months. Says

during that time business continued in the same way as above described and Nichols continued as clerk to Jennings.

Says he knew R. P. Tinsley, who was agent of domestice trade department of Standard Oil Company, before he went with Waters-Pierce Oil Company. Mr. Bachus was a traveling auditor of Standard Oil Company before he went with Waters-Pierce Oil Company.

When he left Cleveland he went back to Albany, New York,
295 with Standard Oil Company. Stayed there about a month and then with Atlantic Refining Company. From there, after a very short time, he went back to Albany. He finally resigned from Standard Oil Company—he was asked to do so.

L. J. Drake finally took the place of Walter Jennings as a member of the domestic trade committee. Same Drake who was connected with Standard at Chicago.

Just before going with Republic Oil Company at Cleveland he also had a talk with R. P. Tinsley, agent of domestic trade committee, Wade Hampton, general auditor of Standard Oil Company, and George W. Wythe, all at 26 Broadway. Tinsley put him in charge of Mr. Warner, who had charge of books down there, to show him how to run home office end of bookkeeping, in other words, to conduct the bookkeeping department of Republic Oil Company the same as that employed by Standard Oil Company. Hampton cautioned him not to mention the fact that he was connected with Standard Oil Company.

Says there were three traveling auditors of Standard Oil Company transferred to Republic Oil Company to get together the valuation of the stock of the latter company. After they got through they were reinstated by Standard Oil Company.

Howard Page.

(Pages 1612 to 1622, Inclusive.)

He has an office at 26 Broadway and is connected with foreign department of Standard Oil Company of New York. Was once connected with Union Tank Line Company, which owned cars for rent to other companies, and had an office at 26 Broadway. He was vice-president of that company. Says they rented cars to Waters-Pierce Oil Company, which had some cars of its own. Standard Oil Company of Indiana also used those cars—U. T. L. cars. Says
296 this company received reports from all companies using its cars as to their receipt, movements, etc.

Says he was formerly connected with Chess-Carley & Company. He was also connected with Standard Oil Company of Kentucky. Then he went with Standard Oil Company of New York. He was connected with this latter company and Union Tank Line Company at the same time and both had offices at 26 Broadway.

A. V. Jockel.

(Pages 1650 to 1667, Inclusive.)

While passing through St. Louis on his way to Oklahoma City, as testified, he met at Waters-Pierce headquarters, Tinsley, Backus, Gruett, C. P. Ackert, Mr. King and Mr. McKee.

Met Mr. McKee in the office of Mr. King, who received reports from all Waters-Pierce branches or divisions. He was connected with the auditing of stock reports.

McKee was instructing a new auditor whom they were about to send out to audit a division or station.

Says he had known Mr. Tinsley at 26 Broadway, when he was located there.

Before Tinsley went out to St. Louis and while he was at 26 Broadway, he was agent who received reports from all branches of Standard Oil Company divisions.

Says he wrote to General Hadley in October, 1905, that he had information. This was after he read about the case in the papers.

Says he worked at Newark, N. J., for six months as bookkeeper and was at Oklahoma City ten weeks. This was the full time he worked for any of the respondents.

Says at Newark he got $624 a year, and at Oklahoma City $1,200. Mr. McNall told him what his salary would be—no one else.

297 Was charged at one time with appropriating $100 from a company, but he was not convicted. On account of this charge the American Surety Company would not bond him at Oklahoma City and he had to resign his position there.

William H. D. Read.

(Pages 1667 to 1672, Inclusive.)

Lives at Whitehall, Md. Is a farmer.

He was traveling auditor for Standard Oil Company from 1895 to 1902. He was employed by Wade Hampton and he was paid by him monthly, and reported to him at 26 Broadway, New York City.

While he was with Wade Hampton he audited the books of Waters-Pierce Oil Company at St. Louis, twice, at the direction of Hampton—the present Wade Hampton. On these two occasions he reported to the auditor in charge of auditing at 26 Broadway; the first time it was W. T. McKee and the second time Charles T. White.

During the time he was working for Hampton he made occasional trips to 26 Broadway. Audited books at Waters-Pierce Oil Company in the years 1897, 1898, or 1899.

Francis D. Carley.

(Pages 1672 to 1680, Inclusive.)

Lives in White Plains and has no business at present. He was in the oil business in Louisville, Kentucky, from 1866 to 1886. He

was first with the firm of Chess, Carley & Co., and later with Chess-Carley Co., a corporation, and was engaged in the business of refining and selling the products of petroleum in all the southern states east of the Mississippi river.

He became a stockholder in Waters-Pierce Oil Company in 1884 to 1886. The Chess-Carley Co. also became a stockholder in Waters-Pierce Oil Company in about 1883. All this stock he sold to some one at 26 Broadway in about 1887. The Chess-Carley Co.
298 then went out of existence and Standard Oil Company of Kentucky succeeded it.

H. A. Hutchins, who was a director in Waters-Pierce Oil Company, was located at Cleveland and had something to do with the distribution of oils in the western states for Standard Oil Company.

Col. Thompson, a director in Waters-Pierce Oil Company, at one time was connected with 26 Broadway.

Says after he became connected with Waters-Pierce Oil Company it got nearly all of its oil from Standard Oil Company.

Says sometime in the '80s he bought individually the M., K. & T. Tank Line, consisting of a few oil tank cars run over the M., K. & T. Ry. He sold this line and took pay in Waters-Pierce stock—this was an individual transaction.

Established facilities by a good merchant selling oil in a locality gives him almost complete control.

Albert A. Smith.

(Pages 1680 to 1690, Inclusive.)

Says he is a stenographer. He worked as such in the department of W. E. Bemis at 26 Broadway, from May, 1903, to June 30, 1905. Bemis was at one time on the domestic trade committee and later on some committee with Howard Page. He was also head of the Statistical department, and as such received reports from all over the world concerning the petroleum business.

Says as stenographer he took dictations of many letters to Republic Oil Company and Waters-Pierce Oil Company, concerning the general conduct of the business. Says he took these dictations while in the office of Mr. Bemis and this continued during the whole time he was there. The dictations were made by various persons and on different branches of the business. They were first turned
299 over to Mr. Wilson and then sent in to be signed by Mr. McNall, that is, letters to Waters-Pierce Oil Company. Letters to Republic Oil Company were sent to the office of C. L. Nichols to be signed. Both McNall and Nichols had offices in the building. Nichols was in office with L. J. Drake and McNall in office with W. H. Tilford.

Up to a short time before he left when a letter would be written to Republic Oil Company or Waters-Pierce Oil Company, a carbon was made and kept in the office of Bemis. The name of the company would appear on the carbon—then a change was made so that two

carbons were made—one would be sent with the letter to be signed, and one kept in the office, but the names of the company would not appear on the carbon.

He was discharged from his position with Standard Oil Company, but refuses to give the reasons.

Says he became a witness in this case because he thought he could give some good valuable testimony against the Standard Oil Company.

Says letters written by him to Waters-Pierce Oil Company were on letter heads of that company, and letters written to Republic Oil Company by him were on the letter heads of that company.

Henry H. Rogers.

(Pages 1720 to 1726, Inclusive.)

He is a stockholder in Standard Oil Company of Indiana, but is not familiar with the details of the oil business in Missouri.

M. M. Van Beuren is a son-in-law o John D. Archbold.

H. M. Tilford has an office at 26 Broadway, and is connected with the Continental Oil Company.

J. A. Moffett is president of Standard Oil Company of Indiana.

300 (Page 1722.)

Gives a list of officers and directors of Standard Oil Company of Indiana for years 1903, 1904, 1905.

Walter C. Teagle is connected with the foreign business of Standard Oil Company at 26 Broadway.

Moffett has an office at 26 Broadway.

(Page 1724.)

It is here admitted by counsel for respondents that a majority of the stock of the Republic Oil Company and Standard Oil Company of Indiana, and all the stock of Waters-Pierce Oil Company, standing in name of M. M. Van Buren, was held during the time laid in the information for Standard Oil Company of New Jersey.

Says he had had conversations in a general way about the business of Waters-Pierce Oil Company between January, 1901, and March, 1905—these conversations were with some of the oil people.

Says he has heard of McNall in Mr. Tilford's office at 26 Broadway.

William G. Rockefeller.

(Pages 1726 to 1730, Inclusive.)

Lives in New York and is assistant treasurer of Standard Oil Company of New Jersey, and has held that position for about five years. W. H. Tilford is treasurer. H. M. Tilford is a brother of W. H. Tilford, and he also has an office at 26 Broadway.

Has known R. H. McNall for past thirty years. He is at 26 Broadway, but does not know what position he holds. Has seen him at 26 Broadway for a good many years, but never knew just what position he held.

Has known H. M. Tilford at 26 Broadway for ten years, but never knew what position he held there. Never heard of McNall until his name was mentioned in taking these depositions.

301 Witness has an office at 26 Broadway, and the Standard Oil Company of New Jersey does business there. Says he thinks his uncle, John D. Rockefeller, is one of the vice-presidents of that company.

He has met Mr. Moffett, who has an office at 26 Broadway.

Says Frank Wilson is employed in the office of witness as bookkeeper of the Standard Oil Company of New Jersey.

Says he knew a George D. Wilson who was formerly a bookkeeper, and he was succeeded by Frank Wilson.

John D. Archbold.

(Pages 1732 to 1750, Inclusive.)

Lives in New York City and is one of the vice-presidents of Standard Oil Company of New Jersey. He is also a director in the Standard Oil Company of Indiana.

John D. Rockefeller is president of Standard Oil Company of New Jersey, and has been since its organization. This company refines petroleum, but it does not operate wells. It has refineries at Bayonne, New Jersey, but has no others that he knows of.

M. M. Van Beuren is the son-in-law of the witness. Van Beuren now has no active connection with the oil business and is not connected with any of the companies.

The officers of Standard Oil Company of New Jersey are at 26 Broadway. Also, the Standard Oil Company of Indiana has an office there.

While John D. Rockefeller is the nominal head of Standard Oil Company of New Jersey, for the past ten years he has had no active personal relationship with the business. And while he has an office at 26 Broadway, he is seldom there. He has not of late years attended the meetings of the company.

Witness says that he has, perhaps, in later years been the
302 most active man connected with Standard Oil interests. Others who have been actively connected with him are: Barstow, Moffett, Jennings, Bedford and many others.

H. M. Tilford is as familiar as any one else with the oil business in the central west, including Missouri.

There are committees at 26 Broadway, composed of men actively connected with the oil business. With us, says witness, they are known as experts in their various lines. Says there are a number of people who are connected with the Domestic Trades administration in the various companies, but, not being a member, he can not tell

how they operate. And there is a committee which looks after the foreign trade.

The Galena Oil Company and Atlantic Refining Company both have offices at 26 Broadway.

Says he has been at 26 Broadway since the building was first built, some fifteen years ago.

From 1892 to 1900 the Standard Oil Company of New Jersey had 2750 shares of stock in Waters-Pierce Oil Company. Prior to that time the same stock had been held by Standard Oil Trust. And since May, 1900, this same stock has been held by Mr. Van Buren.

Says the total productions of petroleum in United States for January, 1906, was 345,000 barrels, of which the Standard Oil interests produced 45,000 barrels.

Of the production in Kansas and Indian Territory Standard produces one-eighth, or one-ninth of the crude.

Says there is a refinery capacity in this country, competitive to the Standard Oil Company, enough to do the entire business of the country. Standard Oil interests also have enough refining capacity to do the business and do get 75 per cent of the whole—that is the sales.

Says there are competitive refineries at all points where oil is refined.

Heard about the dissolution of the old Waters-Pierce Oil Company and supposed it was because of the trouble in Texas.

303 Knew Horace A. Hutchins, W. P. Thompson and Frank B. Carley, who were directors in Waters-Pierce Oil Company down to 1885, and they were at the same time connected with standard Oil Company.

In 1885 Carley was succeeded by W. H. Tilford, who was also connected with Standard Oil Company.

D. S. Coles, who appears as a director of Waters-Pierce Oil Company in 1887, was formerly connected with Standard Oil Company.

Silas H. Payne who appears as a director of Waters-Pierce Oil Company in 1889 was, and is also a Standard Oil man.

G. F. Gregory, who appears as a director of Waters-Pierce Oil Company in 1890, was also connected with Standard Oil Company.

Witness says he does not personally know of the connection of the foregoing named persons with Waters-Pierce Oil Company, but is assuming that such facts are properly stated by counsel.

C. M. Pratt, in 1891, was also connected with Standard Oil interests.

The original Standard Oil Trustees were John D. Rockefeller, William Rockefeller, H. N. Flagler, Charles Pratt, W. G. Warden, Ben. J. Brewster, J. A. Bostwick, O. M. Payne and John D. Archbold, in 1882.

R. P. Tinsley, prior to 1904, was connected with Standard Oil interests at 26 Broadway. Tinsley is still in the employ of Standard Oil Company.

Wade Hampton.

(Pages 1751 to 1781, Inclusive.)

He is general auditor of Standard Oil Company of New Jer
and Indiana, and is located at 26 Broadway.

He has never been the general auditor of Waters-Pierce Oil Co
pany, but some of his staff was employed by that compa
304 but did not report to him. He directed auditors from his st
to go to St. Louis and audit for Waters-Pierce Oil Compa
under employment by that company, and report to its secreta
These auditors, while auditing the accounts of Waters-Pierce
Company, were on its pay rolls and not on his. When they had f
ished they were again placed on his pay rolls.

When these auditors would go to St. Louis he would notify t
secretary. That was the understanding he had with the direct
that they should be employed because they preferred Standard
auditors.

He audited the books of the Standard Oil Company of India
because he was its general auditor. He had nothing to do with t
Republic Oil Company.

Says he thinks a copy of auditor's report of Waters-Pierce Oil Co
pany was sent to 26 Broadway to some one.

Prior to June 1, 1900, reports of the audit of the books of Wate
Pierce Oil Company were sent to him at 26 Broadway, he pass
on them and then submitted them to some one who represented t
Standard Oil Company's ownership.

McNall formerly was connected with the Pratt Works office at
Broadway, and afterwards changed and went into the office of H.
Tilford, where he has been for several years past.

(Page 1758.)

Letter dated Feb. 8, 1901, from Wade Hampton to J. P. Grue
vice-president Waters-Pierce Oil Company, saying to him that M
Conrey would arrive on Monday to audit the books and general a
counts of St. Louis office.

This language occurs: "For reasons which you will undoubted
appreciate, it is best that Mr. Conrey be considered an employé
your company during his examination. Therefore kindly enter h
name on your pay roll from the date of his arrival at $191.
305 per month; also kindly pay what expense he is under fro
the time he left New York."

(Page 1760.)

Letter from Hampton to J. P. Gruett, dated Nov. 7, 190
marked "Personal," notifying him that C. W. Norman would
there to audit the books and accounts of the general office of Wate
Pierce Oil Company, and that he would be assisted by Henders
and Higgs. Directions to place Norman on pay roll at $2,500 p
annum.

Another personal letter from Hampton to Gruett, dated Nov. 12, 1902, advising him to place Henderson and Higgs on the pay roll of the Waters-Pierce Oil Company at $1,800 per annum, as well as to pay their expenses from the time they started to St. Louis.

Says that in all cases where auditors were sent to audit the accounts of Waters-Pierce Oil Company it was done in the manner indicated in those letters—this was after May 29, 1900.

R. B. Backus was an auditor working under him.

(Page 1765.)

Letter from Hampton to Gruett, dated Nov. 10, 1903, notifying him that he was sending R. D. Backus to audit the books and accounts of the general office of W. P. O. Co., and directing Gruett to place Backus on pay roll at $3,000 per annum and expenses.

(Page 1769.)

Letter from Hampton to Gruett, dated Dec. 10, 1903, notifying him that Wm. Waller would arrive to assist Mr. Backus in auditing books of Waters-Pierce Oil Company, and directing that he be placed on pay rolls at $2,100 per annum, and to pay his expenses from Decatur, Ill.

Says they ought to have had a plant record of Waters-Pierce Oil Company at 26 Broadway, because they were largely in-
306 terested in that company, but he does not know that they had. Says construction reports of Waters-Pierce Oil Company were addressed to him, but he did not handle them. This was prior to 1900. One Mr. Barker had charge of plant records. He was in the office of witness, but afterwards moved to that of Clark.

(Page 1773.)

Letter dated Sept. 8, 1899, from Hampton to Gruett, relating to construction reports of Waters-Pierce Oil Company, which had been sent to Hampton at 26 Broadway.

(Page 1775.)

Letter dated Oct. 20, 1899, from Hampton to Gruett, relating to plants and construction matters in Mexico.

G. A. Stein and H. H. Stein worked for him as traveling auditors. Says he possibly directed them to audit the accounts of the old Waters-Pierce Oil Company. He had about fifty or sixty men working under him—traveling auditors. If they audited since 1900 they did so on communications from him to go to St. Louis, but they would not be under his direction after they got there—they did not report to him. Before 1900 the report of such auditing would be sent to witness. After 1900 such reports were made to Pierce, but some one at 26 Broadway had a copy.

Says he heard that both Backus and Tinsley went with Waters-Pierce Oil Company in 1904.

Prior to going with Waters-Pierce Oil Company R. P. Tinsley

had a position at 26 Broadway as agent of Standard Oil Company of New York, Atlantic Refining Company and Standard Oil Company of New Jersey. He was succeeded by H. C. Arnold, who is still agent.

Mr. Nichols of 26 Broadway is assistant to Mr. Drake, who is connected with Standard Oil Company of Indiana, and he is a member of Domestic Trade committee.

307 The import of Mr. Hampton's testimony is that prior to May 29, 1900, he as general auditor had his traveling men audit the accounts and books of the general office of Waters-Pierce Oil Company, the result of their work was reported to him and he paid for the services of the auditors. After May 29, 1900, he directed his traveling auditors to audit the accounts and books of the general office of Waters-Pierce Oil Company, he further requested and directed that they be placed on the pay rolls of that company at a salary fixed by Hampton, which was done, and while the result was not reported directly to him, yet a copy of such result reached 26 Broadway, New York City. These audits were made in the way described by Hampton each year after May 29, 1900.

Harry Egbert Platt.

(Pages 1781 to 1799, Inclusive.)

Lives in New York City. Went with Standard Oil Company at 26 Broadway about February, 1902, or 1903. Was first employed as clerk by Union Tank Line Company. W. H. Tilford was president of that company. First he was under Mr. Cook and then was transferred to Mr. Tilford's office. Worked for that company about six months.

When he went in Mr. Tilford's office he was paid by Standard Oil Company of New Jersey.

Union Tank Line Company operated cars throughout the United States for several companies which had offices at 26 Broadway.

Says Waters-Pierce Oil Company had W. P. O. cars and Union Tank Line Company got reports of the movements of these cars. Republic Oil Company, Waters-Pierce Oil Company and Standard Oil Company of Indiana, all reported as to cars.

R. H. McNall had a desk in same office with H. M. Tilford. C. L. Nichols was in office of Mr. Drake.

Says while he was in Tilford's office cash reports were received from Waters-Pierce Oil Company. Such reports were re-
308 ceived daily by Mr. McNall, and were sent to the comptroller's office, in a different room. During the time he was in this office for over two years this system continued.

Also, McNall, in that office, who was commercial agent, received marine reports from Waters-Pierce Oil Company and reports of "Sales and deliveries of refined oils." The last report mentioned was sent to Mr. Bemis' office, who was statistical agent of Standard Oil Company. Reports of "Marine Sales" was sent down to Marine Oil department, which was in charge of Mr. Bedford.

Appropriations for construction and building of Waters-Pierce Oil Company were also sent to the office he was in and were passed on by a committee. The action of the committee would be communicated by Mr. McNall to the St. Louis office, with instructions.

Also matters relating to advance in salaries of Waters-Pierce Oil Company were sent to that office and passed on by the same committee.

(Page 1799.)

Letter from H. M. Tilford to J. P. Gruett, dated August 20, 1900, acknowledging receipt of comparative statement of sale of refined oils, naptha and gasoline as well as tank wagon sales of refined oils, by Waters-Pierce Oil Company.

(Page 1801.)

Letter from L. D. Clarke, comptroller, to J. P. Gruett, St. Louis, enclosing notes and instructions relating to analysis of business.

(Page 1802.)

Admitted that W. F. Taylor is the personal attorney of M. M. Van Buren, and became a stockholder and was elected and served as a director of Waters-Pierce Oil Company at request of Standard Oil Company of New Jersey.

309 *H. M. Tilford.*

(Pages 1802 to 1830, Inclusive.)

Lives in New York City and is connected with Continental Oil Company and Standard Oil Company that does business on the Pacific coast. Continental Oil Company does business in Colorado, Wyoming, Utah and that section. He is president of Continental Oil Company and has his office at 26 Broadway. It is the Standard Oil Company of Iowa that does business on the Pacific coast. He is not connected with Standard Oil Company of New Jersey.

Says he held a share of stock and was a director in Waters-Pierce Oil Company from 1892 to 1900, and knew something of the business and where it sold oil during that time.

(Page 1805.)

Letter from A. M. Finlay, vice-president and general manager of Waters-Pierce Oil Company, to H. M. Tilford, dated June 22, 1903, advising Tilford why he could not make a trip to New York at that time to see him.

Says that at different times he met Finlay, Gruett and Adams at 26 Broadway, New York City.

Has known R. H. McNall for fifteen years—he was first connected with the Pratt works at 26 Broadway, a Standard Oil interest. Then McNall went into witness' office as his assistant. Then McNall became commercial agent for Waters-Pierce Oil Company

and had a desk in witness' office and is still there. McNall continued to assist him, but not to the same extent.

Says he knew of the troubles the Waters-Pierce Oil Company had in Texas prior to 1900 and that there was a reincorporation of Waters-Pierce Oil Company in 1900. Also knew that the
310 same business previously done by that company and the same properties that were used by them were continued by the new company. Says he was paid for his stock on reincorporation—over the sum of $900.

W. E. Bemis is located at 26 Broadway and is connected with the export business and keeps statistical reports of Standard Oil interests.

Says No. 1209 26 Broadway is the general entrance to his office, that of W. H. Tilford and R. H. McNall.

(Page 1813.)

Letter from H. M. Tilford to J. P. Gruett, vice-president Waters-Pierce Oil Company, dated August 20, 1900, acknowledging receipt of comparative statement of refined oils sold by that company.

Witness thinks he saw the statement referred to in the above mentioned letter.

Says McNall, although his desk is still in witness' office, has not been there since last November, and he does not know where McNall is. Been no reports from Waters-Pierce Oil Company coming there since McNall left that he knows of. Says McNall did submit some reports to him that he got from Waters-Pierce Oil Company. It was McNall's duty to attend to any business for Waters-Pierce Oil Company in New York.

(Page 1815.)

Letter from J. P. Gruett to R. H. McNall, dated July 3, 1902, sending him a list of salaries of Waters-Pierce Oil Company.

He knew R. P. Tinsley at 26 Broadway was simply *as* agent before he went with Waters-Pierce Oil Company at St. Louis.

(Page 1817.)

Letter from R. H. McNall to J. P. Gruett, secretary Waters-
311 Pierce Oil Company, dated July 9, 1902, notifying him that "Account formerly handled by Walter Jennings, agent, will hereafter be handled by R. P. Tinsley, agent, of same address."

(Page 1818.)

Letter from R. H. McNall to J. P. Gruett, secretary W. P. O. Co., dated June 25, 1903, in relation to receiving a salary list of Waters-Pierce Company.

Admitted that cash statements (daily) sent to McNall by Waters-Pierce Oil Company, together with other reports, were shown to him.

(Page 1819.)

Letter from R. H. McNall to J. P. Gruett, dated August 4, 1903, relative to dividend notices of Waters-Pierce Oil Company, in which McNall remarks that he seldom sees the cash statements sent to him.

(Page 1822.)

Letter from R. H. McNall to S. Johnson, St. Louis, (who was connected with lubricating department of Waters-Pierce Oil Company) dated March 24, 1904, giving him the prices at which to sell crude scale wax.

(Page 1824.)

Letter from R. H. McNall to J. P. Gruett, written by H. M. Tilford, dated Feb. 15, 1902, criticising the report of profits made during the year 1901 by Waters-Pierce Oil Company, on sales of "fuel oil" and resin.

(Page 1825.)

Letter from R. H. McNall to J. P. Gruett, written by H. M. Tilford, dated Feb. 18, 1902, asking a statement showing the names of the banks where Waters-Pierce Oil Company had an account.

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(Page 1826.)

Letter from R. H. McNall to A. M. Finley, dated Dec. 12, 1904, advising him that hereafter in writing to him at 26 Broadway to furnish copies, without date or signature for purpose of distribution outside of McNall's office.

(Page 1828.)

Letter from R. H. McNall to J. P. Gruett, dated Aug. 4, 1902, telling him that the only code books he could find there of W. P. O. Co. were H. M. Tilford No. 415, which he was using, and H. W. Doremus No. 607.

Harry C. Arnold.

(Pages 1830 to 1836, Inclusive.)

Lives in New York City and is an accountant for Standard Oil Company at 26 Broadway. Has been an accountant for about three years. Prior to that he was an assistant to R. P. Tinsley.

Tinsley was in the accounting department of both Standard Oil Company of New York and that of New Jersey and the Atlantic Refining Company.

C. L. Nichols is in Mr. Drake's office and he knows that he was president of Republic Oil Company.

Knows McNall, who was first with the Pratt Works and then assistant to Mr. Tilford.

(Page 1834.)

Letter from H. C. Arnold to R. P. Tinsley, dated October 11, 1904, referring to the services of Mr. Preston for Waters-Pierce Oil Company, Preston being regularly employed by witness at 26 Broadway. Also referring to tank wagon sales record sent by witness to W. P. O. Co.

Says that while Preston was working for Waters-Pierce Oil Company he was paid by that company.

313 (Page 1858.)

Letter from R. H. McNall to J. P. Gruett, secretary W. P. O. Co., St. Louis, dated December 2, 1902, asking him to make and send a statement showing total number of employés of Waters-Pierce Oil Company for a year, together with total amount paid them for one year.

(Page 1859.)

Letter from McNall to Gruett, dated Dec. 17, 1903, asking him to send a copy of by-laws of Waters-Pierce Oil Company.

H. Clay Pierce.

(Pages 1884 to 1989, Inclusive.)

Lives in St. Louis, Mo., is fifty-seven years old, and is a stockholder in the Waters-Pierce Oil Company. He is not nor never has been a stockholder in Standard Oil Company of Indiana, nor Republic Oil Company, nor Standard Oil Company of New Jersey, nor in the so-called Standard Oil Trust. Never owned stock in any oil company other than Waters-Pierce Oil Company. Neither the Standard Oil Company of Indiana nor the Republic Oil Company own any stock in Waters-Pierce Oil Company.

Standard Oil Company of New Jersey owns 2747 shares of Waters-Pierce Oil Company stock, held for it by M. M. Van Beuren.

He, witness, owns 1250 shares of Waters-Pierce Oil Company stock.

Waters-Pierce Oil Company organized originally in 1878 with a capital of one hundred thousand dollars. Waters-Pierce & Company subscribed for forty per cent; Horace A. Hutchins and William P. Thompson subscribed for forty per cent, and Chess-Carley & Company for twenty per cent.

314 First officers: William H. Waters, director and president; H. Clay Pierce, director and vice-president; Charles M Adams, secretary and treasurer; Horace A. Hutchins and William P. Thompson and Francis D. Carley, directors.

Afterwards the trustees of Standard Oil Trust purchased the forty per cent belonging to Hutchinson and Thompson and the twenty per cent belonging to Chess-Carley Company. He, witness, purchased the interest of William H. Waters in the remaining forty per cent. "So that when on May 29, 1900, the first Waters-Pierce

Oil Company was liquidated the assets were distributed in these proportions."

He refused to place his stock in the Standard Trust.

Under agreement by all parties interested he controlled and directed the policy and operations of Waters-Pierce Oil Company until February, 1900, when on account of ill health he elected Andrew M. Finlay, his brother-in-law, president.

Says the liquidation of the first Waters-Pierce Oil Company resulted because an inexperienced agent, located in Texas, had, without the knowledge of the officers of the company, entered into a contract of minor importance, in violation of the laws of that state.

Following the trouble in Texas, he being told by a prominent citizen of that state that no corporation controlled by Standard Oil Company would be tolerated there, he explained the situation fully to the executive committee of the Standard Oil Company, and they agreed that he should organize a new company, the stock of which he should hold, and that he should manage and control the company absolutely free from any dictation or direction of the Standard Oil Company. Says this agreement was kept and the Standard Oil Company made no attempt to interfere with his management up to the spring of 1904.

315 But in the spring of 1904, they, Standard Oil Company, transferred the stock which had been in his name to M. M. Van Buren and began in other ways to assume a control over the affairs and operations of the company. Upon protest by him that this was a violation of the agreement the control of the company was again committed to him, and his son, Clay Arthur Pierce, is now president of the company and is conducting it as an independent business.

When Waters-Pierce Oil Company was organized in 1878 it was then agreed with the Standard Oil Company of Ohio, the only one then in existence, that Waters-Pierce Oil Company would continue to sell oil and confine its operations to the territory in which Waters-Pierce & Company sold, which embraces the territory in which the corporation now sells.

He says the map offered in evidence showing divisional line is not correct. Describes the line in a general way as beginning at a point just south of Hannibal, on west bank of Mississippi River, and thence running according to county lines southwest to the western border of Missouri, bordering upon Kansas, a short distance south of Fort Scott—that is, Waters-Pierce territory was south of this line in Missouri. The other territory was Arkansas, Indian Territory, Oklahoma, Texas, all of Louisiana west of Mississippi and Republic of Mexico. There has been no change in the territory since it was established.

Waters-Pierce Oil Company has obtained its refined oils almost exclusively from Standard Oil Company and its allied interests since its incorporation in 1878.

Waters-Pierce Oil Company has not manufactured refined oils in U. S., but has manufactured lubricating oils. It was engaged as a merchant in U. S. almost exclusively.

It manufactured refined and other oils in Mexico and obtained all its crude petroleum for such manufacturing purposes from Standard Oil Company.

316 The present company succeeded to an established business of the old Waters-Pierce Oil Company and it has confined itself exclusively to building up the business within the same territory.

The gross sales of Waters-Pierce Oil Company in U. S. and Mexico for year 1902 were 2,677,362 barrels of oil of fifty gallons a barrel. Says they could not have procured this oil from all other sources other than Standard Oil Company. Waters-Pierce Oil Company is not interested, nor never has been, in any oil wells or oil producing properties in the U. S.

Says he personally has been engaged in the oil business in the territory in which his company sells for thirty-seven years.

Says he has managed the business of the various interests commencing with W. H. Cobb & Co. and followed by H. C. Pierce & Co., Waters-Pierce & Co., Waters-Pierce Oil Company organized in 1878 and Waters-Pierce Oil Company organized in 1900, down to the present time, with the exception of a short interval.

All the first directors selected in 1878 continued as such up to the annual meeting in 1885, when W. H. Tilford took the place of Carley. In 1887 Mr. Cowels took the place of Hutchins. Then W. H. Tilford was succeeded by H. M. Tilford in 1888. In 1889 Silas H. Payne succeeded H. M. Tilford. A. M. Finlay succeeded Waters in 1890, in which year Pierce purchased Waters' interest.

In the year 1890 he (witness) became president of Waters-Pierce Oil Company and Finlay vice-president.

G. F. Gregory succeeded W. H. Tilford as a director in 1890.

In 1891 the directory consisted of himself, Finlay, H. M. Tilford, Payne and C. M. Pratt, none of whom lived in St. Louis, except Pierce and Finlay, who alone were actively engaged in the management of the company.

317 In 1892 the directory changed so as to include C. M. Adams and J. P. Gruett, who both resided in St. Louis. This directory continued until the dissolution of the old Waters-Pierce Oil Company.

In the new company the first directors were: H. C. Pierce, Andrew M. Finlay, C. M. Adams, J. P. Gruett and J. D. Johnson, which directory continued without change until the spring of 1904, when W. F. Taylor and R. P. Tinsley took the places of J. D. Johnson and J. P. Gruett.

Since the organization of the new company its affairs and policies have been managed by the officers and directors and by the executive committee, composed of the heads of the departments of the company.

The Waters-Pierce Oil Company has never made or entered into any agreement or understanding with any of the respondents to fix or maintain the price at which any of the products of petroleum should be sold upon the market.

Says he is very sure that Waters-Pierce Oil Company could not

have obtained more than a very small per cent of its total output from other sources than the Standard Oil Company of New Jersey and Indiana and their allied interests.

Beginning on page 1898, Mr. Pierce describes at length and in detail the equipments and facilities for transporting and marketing the products of petroleum in the territory of his company, and gives the origin, growth and improvements in such equipments and facilities as established by him representing the Waters-Pierce Oil Company.

His company has never tried to extend its territorial limits since it was established in 1878.

Says he established tank station in East St. Louis and laid several pipe lines under the river connecting with it through which the oil is conveyed to St. Louis, Missouri, in order to save the great expense of transporting same oil across in cars.

318 Says the equipments and plants of the company are worth in the neighborhood of five million dollars.

Says he has sold oil long ago at a dollar a gallon and in recent years as low as four and five cents.

Says the price of the refined product to the consumer depends on the price of crude, its proximity to place of manufacture, marketing point, etc. See pages 1902, where witness goes into detail along this line.

The Waters-Pierce Oil Company in the United States occupies the position of merchandising the manufactured products of petroleum. In the Republic of Mexico from the crude petroleum purchased of Standard Oil Company it manufactures and sells practically all the products of petroleum sold in that country.

A refinery was erected by Standard Oil Company at Sugar Creek, Missouri, about three years ago, which is comparatively large. Says the oils produced in Kansas are much inferior to the oils from which the Whiting products are manufactured.

Page 1906 gives in detail the advantages both to the Company and merchant of the superior equipments and facilities of the Waters-Pierce Oil Company for handling and marketing oils.

Says there are not nor has there ever been any competitors of Waters-Pierce Oil Company equipped equal to it for handling and selling refined oils.

Says Waters-Pierce Oil Company has sold from ninety to ninety-five per cent of all the oil in its territory, and that such large percentage of sales over its competitors was due entirely to the better facilities afforded by it to the consumer than the competitor could furnish, and its policy of close and prompt attention to business.

Says their best brand of oil, eupion, is manufactured for the company in this country by the Standard Oil Company.

319 Says he has not discussed the question of the division of territory with anyone since the present Waters-Pierce Oil Company was organized.

He says that a fair estimate of the value of the assets and good will of the company is forty-five to fifty million dollars.

There are four thousand shares of stock of the company and he owns thirty-one and a half per cent of the stock.

Says the tangible assets of the company, not including good will, are worth in the neighborhood of twelve million dollars.

They have trade-marks for all kinds of oils, greases and other products that they handle.

Denies any combination, confederation, agreement, express or implied, as charged in the information, with any company.

Cross-examination:

Standard Oil Company of Indiana has not to his knowledge competed with Waters-Pierce Oil Company in Missouri, nor has it sold oil in Waters-Pierce territory except in some few instances—one instance he mentions at Lamar, Mo.

Says he, as president, did not deem it expedient to go beyond the territory which had been established for twenty-eight years and do business in Kansas City, and did not do so because the original Waters-Pierce Oil Company agreed it would confine its operations to the territory in which it and its predecessors had transacted its business—so agreed with Standard Oil Company of Ohio.

Three, four or five months after the incorporation of the new company he transferred to Mr. Garth, cashier Mechanics National Bank of New York, sixty-eight and one-half per cent of Waters-Pierce stock, and made the transfer because it was understood that
320 he would do so. This stock was transferred in blank and in June, 1904, a formal assignment of it was made to M. M. Van Beuren—on the books of the company. This was the first time he had known or heard of Van Beuren.

Prior to June, 1904, he received the dividends on all the stock and transferred a part of them to Seaboard National Bank at the request of one of the Tilfords, who was connected with the Standard Oil Company. This was either W. H. Tilford or H. M. Tilford, who had an office at 26 Broadway.

Says the shares assigned by him to Mr. Garth of the Seaboard National Bank were paid for by Mr. Garth—they were delivered to him shortly after the reincorporation of new Waters-Pierce Oil Company. He did not know Garth, but was told he represented Charles Pratt of Standard Oil Company. Says he was told by his attorney, J. D. Johnson, that an arrangement was made with counsel for Standard Oil Company for him to transfer 2748 shares of stock to Pratt—this was stock in the new company, and his understanding was it belonged to Standard Oil Company. In other words, the Standard Oil Company continued to hold in the new Waters-Pierce Oil Company the same interest it had held in the old company.

All dividends on the 2748 shares coming into his possession were immediately transferred to the Seaboard National Bank of New York City for Standard Oil Company.

In 1890 when he purchased the interest of Waters for the first time the proportion of ownership stood, Standard Oil Company 2750 shares and Pierce 1250 shares, and practically that same division has existed up to the present time.

Says that since the organization of the new company the stock of Standard Oil Company has stood in his name so that he might exercise absolute control of the company and that was the object
321 of putting it in his name. Yet soon after the organization he signed blank transfers of stock amounting to 2748 shares and delivered it to Mr. Garth.

Says he had absolute control and management of Waters-Pierce Oil Company from June 1, 1900, up to the spring of 1904.

When the stock was transferred to M. M. Van Beuren in 1904, the Standard Oil Company began to assume control, by ousting his directors and substituting those of its own selection, sending men here to manage the company, sending men into its territory, and did everything that would follow a changed condition of affairs.

Says all the Standard Oil interests from 1878 on had agreed with him that he should have absolute control of Waters-Pierce business in its territory.

Says the auditors of the Standard Oil Company audited the books of Waters-Pierce Oil Company as often as it saw fit to do so, but auditors of Standard did not audit such books between 1900 and 1904. Says Standard Oil auditors did audit the books of Waters-Pierce Oil Company during the year 1904 and fore part of 1905.

Says old Waters-Pierce Oil Company employed several Standard Oil employés at 26 Broadway to render certain special services in New York, such as buying supplies for the Mexico business. The old company made regular reports to the various heads of departments of Standard Oil Company at 26 Broadway.

After the organization of the new company the system was changed and all reports were sent to R. H. McNall, 26 Broadway. The change was made in order to simplify the work. It had grown to such dimensions that it was found better to have a man at 26 Broadway through whom all the New York work could be done. Instead of this company reporting to various departments of Standard Oil Company all that was done through McNall.
322 McNall had been chief clerk to H. M. Tilford and continued in his office.

Says about the same reports were made and sent to McNall as had been formerly sent to Standard Oil Company, and these reports embraced results of transactions and operations of Waters-Pierce Oil Company.

Says Mr. McNall was furnished by way of reports, anything and everything that he asked for as the representative of the Standard Oil Company and its various heads. The different heads of the Standard Oil Company of New Jersey at 26 Broadway were in the habit of asking information of Waters-Pierce Oil Company officers through McNall and as that company was a majority stockholder, he very readily instructed the various heads of the departments of the Waters-Pierce Oil Company to send such information as was asked for.

Dividends of Waters-Pierce Oil Company have run from six to seven hundred per cent per year.

Page 1941—gives reasons in full why Waters-Pierce Oil Company has not engaged in the refining business in United States.

Says he thinks Standard Oil Company has sold to others than his company in this territory—names Republic Oil Company and George P. Jones & Co., who bought as jobbers from Standard, but does not know of other companies.

Says Standard has tank station in East St. Louis and sells there in competition with Waters-Pierce Oil Company.

Says that Waters-Pierce Oil Company purchased the Schofield Shurmer & Teagle plant at Springfield, Mo., and absorbed it into its own business—that Republic Oil Company did not do business in Springfield. Waters-Pierce Oil Company had no dealings with Republic Oil Company at Springfield or elsewhere.

Waters-Pierce Oil Company owns what is known as International Oil Works in St. Louis, run by Mr. Grenner on a salary paid
323 by his company. It runs as a separate company, has wagons of its own and runs them.

Page 1947. Gives an outline of where Waters-Pierce Oil Company first got its oil, the confined fields of production then and the discoveries in recent years, resulting in more refineries, etc.

Says that the St. Louis Oil Company nor any other oil company doing business in Waters-Pierce territory has equipments for doing business which will in any way compare with those of his company.

Says the new company has not done so large a per cent of the business as the old company because of the discoverey of new oil fields adjacent to the territory and because of the increase in number of competing companies. The new company has done from eighty to eighty-five per cent of the business.

Says Schofield, Shurmer & Teagle did a very small business and had very insignificant equipments compared with Waters-Pierce Oil Company.

That he was in St. Louis nearly all the time during the years 1900, 1901 and 1902; that during most of the years 1903 and 1904 he was ill East and unable to be in St. Louis.

In February, 1904, A. M. Finlay was made president.

Page 1957. Describes the constant attention he has given the business of Waters-Pierce Oil Company since 1878, whether he was in St. Louis or New York.

Says he knew all the time in a general way that reports were being made to 26 Broadway, but was not familiar with the details.

Says the fact that Standard Oil auditors while auditing the books of Waters-Pierce Oil Company were placed upon the pay rolls of Waters-Pierce Oil Company was not known to him, and if he had known it he would have protested against it, as he had always understood that the Standard Oil Company was paying for services of its own auditors.

324 Daily cash statements have always been sent to Standard Oil Company and he knew they had been sent to McNall.

Proposed raises in salaries were not reported to either Standard Oil Company or McNall—after salaries were raised they may have been reported.

Says R. P. Tinsley came to St. Louis in April, 1904, and assumed charge of the accounting department as successor to Mr. Gruet. He remained until about June, 1905. Tinsley was elected vice-president of Waters-Pierce Oil Company in February, 1904.

Mr. Tinsley never came to St. Louis for the purpose of assuming the management of Waters-Pierce Oil Company. He came through the recommendation of W. H. Tilford, representing the Standard Oil Company, to succeed Mr. Gruet in auditing and accounting department. Mr. Finlay was elected at same time as president to take Pierce's place on account of his failing health. Tinsley at first made no objections to taking charge of the books and accounts as originally intended, but finally he refused to do so, and soon after Mr. Findlay having to go abroad in order to recuperate his failing health, Tinsley assumed entire charge of the whole business and began to run this his own way. He discharged many experienced employés and substituted Standard Oil men who were not so efficient and did many things to interfere with the management established by witness. To this witness protested and Tinsley was finally taken away. Says he did not protest against the transfer of the 2747 shares of stock to Van Beuren, because there was no occasion to protest, but what protest he made was made to Mr. Rogers, Mr. Archbold and Mr. W. H. Tilford, because they were the people responsible to him for the keeping of the agreement that was made when the company was organized.

Says when new company was organized he gave his check for four hundred thousand dollars, the par value of all the stock.
325 When he delivered the 2748 shares to Mr. Garth, about September, 1900, Garth paid him in money the face or par value of those shares.

Says there was an agreement between him and the Executive Committee of the Standard Oil Company that he should organize a new company, the stock of which he should hold. This had reference to the trouble in Texas and the information given that no company controlled by Standard Oil Company would longer be permitted to do business in that state.

Says that it is quite likely a dividend of one hundred per cent was paid by old Waters-Pierce Oil Company about May 21, 1900. Says he remembers that one hundred per cent dividends were paid on other occasions wherever the surplus would permit.

Says when the new company was organized notes were given by it, but he does not remember the details or amounts. He was given a note—does not remember that it was for $1,227,399.00—which was afterwards paid by Waters-Pierce Oil Company.

Says the Waters-Pierce Oil Company was managed as an absolutely independent company by him, and any construction or improvement that he or the advisory board or executive committee of Waters-Pierce Oil Company saw fit to make was constructed without any suggestion or interference from the Standard Oil Company up to the time that he was obliged to relinquish active control because of ill health.

Charles P. Ackert.

(Pages 1991 to 2174, Inclusive.)

Age forty-three and lives in St. Louis. In June, 1902, he became general manager of Waters-Pierce Oil Company and has occupied that position since.

In the spring of 1884 he began work for Waters-Pierce Oil Company as agent at Fort Smith, Ark.—remained there five
326 years and then became traveling salesman out of Little Rock. Stayed there about six months and then came to St Louis and started in as salesman. After being in St. Louis about six months he went to Louisiana division, where he stayed for one year and a half. Then he became manager of the Arkansas division, with headquarters at Little Rock. In June, 1894, he was again transferred to St. Louis as assistant manager of the lubricating department, in which position he remained for five years, or until 1899. Then he held two or three different positions with the company until the dissolution of the old company—he was in the secretary's office at that time.

He began as general manager of the new company when it was first organized. There was some changes affecting merely the title when in 1902 his title of general manager was restored. He has practically been performing the duties of general manager since the incorporation of the new company.

As general manager he has been in charge of and employed and had the direction of men, conferred with other officers of the company relative to prices, and performed all such duties as generally pertained to such a position. Has general supervisory control over the whole business, receives reports from agents, etc.

H. C. Pierce became the first president of the new company. He was succeeded by Andrew M. Findlay in February, 1904.

Waters-Pierce Oil Company did business in part of Missouri, Arkansas, Indian Territory, Oklahoma, part of Louisiana, all of Texas and all of Republic of Mexico.

This territory has been divided into divisions. The Missouri division, headquarters at St. Louis, with jurisdiction over business in Missouri; Arkansas division, headquarters at Little Rock, comprising all of Arkansas and small portion of Indian Territory; Oklahoma
327 division, comprising the balance of Indian Territory, Oklahoma Territory and Panhandle of Texas; Central Texas division, headquarters at Houston, and East Texas division headquarters at Shreveport, embracing all of Texas and that part of Louisiana lying west of Mississippi River; Republic of Mexico division, headquarters in City of Mexico, including all the Republic. A manager is in charge of each division, who looks after the business of marketing oil in that division under the jurisdiction of the general office. All agents and employés of a division are under the direction and control of the division manager, who in turn is under the direction and control of the general manager. The home office of the

company, headquarters of general manager, is in Bank of Commerce building, St. Louis, Missouri.

The company has numerous plants where stocks of oil are carried throughout its territory—the largest plant is at Thirteenth and Gratiot streets, St. Louis.

The plant at St. Louis is used for storage of oils, refined and lubricating in bulk, and a warehouse for the manufacture of grease and the storage of all barrel oil. There are sixty storage tanks there for the storage of refined oils, gasoline, lubricating and linseed oil. Also carries therein stock axle grease, castor oil and paraffin wax and manufactures iron barrels and tank wagons. That is the storage plant for the city of St. Louis as well as the distributing plant for all points in the Missouri division, and from which oils are shipped to other divisions.

The company has a pumping station in East St. Louis. Pipe lines connect with that station, from which oil is pumped across the river into storage tanks in St. Louis.

Says St. Louis and vicinity, including Granite City, has about sixty-five tanks, large and small, of capacities running from two hundred and fifty barrel tank to five thousand barrel tank.

At tank stations oil is received in tank cars and pumped into storage tanks. From these storage tanks it is delivered to cus-
328 tomers either by tank wagons or iron barrels or milk cans. Refined oils and gasoline are handled exclusively by means of storage tanks wherever the trade can be reached from the tanks, and they have tank stations in all towns of any importance. Lubricating oil is also handled from storage tanks to some extent. They have tank wagons at tank stations. There are fifty-four stations in Missouri division, where tank wagons are used for the purpose of delivering oil to merchants. This is outside of St. Louis and there are thirty-two tank wagons.

The Missouri division includes all places in Missouri except city of St. Louis, East St. Louis, St. Louis County, Granite City, Carondelet and Webster.

There are 419 tank stations in the United States and Mexico and two hundred and sixty-six wagons operated at them.

Quite a number of tank stations are operated where tank wagons are not used because the trade does not justify the expense. At these points deliveries are made in cans.

The oil is transported principally in tank cars. The Waters-Pierce Oil Company owns 104 tank oil cars and has 148 under lease from Union Tank Line Company.

The cars above referred to are not used in the transportation of oil from the northern refineries. Oils purchased from such refineries are transported in Union Tank Line cars. These cars come from Neodesha, Sugar Creek, Whiting and Franklin (all Standard Oil Refineries). The company keeps a record of these cars, of their arrival at and departure from the agency to which it is consigned. Reports of such movements are made to Union Tank Line Company—to H. R. Payne. This is done for the purpose of keeping

trace of the cars. It also keeps such a record of its own cars in order to know at all times where they are, but its own cars are not reported to Payne of any one else.

329 In Missouri there are thirty-seven agencies where there are no tank stations, and in the whole territory, including Mexico, there are 251 agencies outside of tank station agencies.

Wherever there is an agency or tank station it is sufficient to supply the trade at that point.

Pages 2007 and 2008. Witness explains fully how oils are distributed from a tank station by means of tank wagons. How the oil is delivered to the merchant just as he needs it, and measured to him at his place of business, thus saving the inconvenience, extra cost and loss from use of wooden barrels.

Tank wagon drivers are solicitors, and they have soliciting agents besides.

Page- 2008-9. Explains can wagon delivery from tank station.

Tank wagons usually run in the country in capacity from three hundred and fifty to five hundred and fifty gallons and in the city of St. Louis larger, some running to a thousand gallons. They are usually made in three compartments.

Says they did forty-three per cent of their business during 1895 in Missouri by tank wagon and can delivery. By means of this kind of delivery there is no loss by evaporation to the customer, because his oil is measured to him at the time he gets it.

They also distribute oil to interior and small points by means of iron and wooden barrels and iron drums.

The percentage of leakage in iron barrels or iron drums is very small. There is always more or less leakage in wooden barrels.

Customers don't want oil in wooden barrels when they can get it in iron barrels or delivered from tank wagon or can. The customer loses when he buys in wooden barrels by leakage and evaporation, but he does not lose by the other modes of delivery. Says

330 they charge from one and a half to two cents more per gallon for oil delivered in wooden barrels, to cover cost of barrel and barrelling.

Says their agents and tank wagon drivers are instructed to see that everything is entirely satisfactory to the customer; that wagons are going around often enough; that customers don't run out of oil; if there are complaints of any nature to investigate them, and to go after any new trade.

Some twelve or fifteen salesmen outside of agents and tank wagon drivers, are employed in the Missouri division.

Says the same methods of selling oil and furnishing the trade was established twenty-two years ago. Their equipment has been enlarged according to the growth of the territory.

Says their tank stations, wagons and equipments for handling and selling their products have increased from fifteen to twenty per cent since 1900.

In St. Louis, the St. Louis Oil Company, Bell Oil Company and Republic Oil Company are competitors and operate tank wagons in the city of St. Louis. E. M. Wilhoit, a competitor, has a tank sta-

tion at Springfield, Joplin and Aurora. There are no other competitors operating tank stations in Missouri. No other dealers distribute oil in cans in Missouri, nor in iron barrels. The only other company except Waters-Pierce Oil Company using iron barrels is Wilhoit.

Tanks for use by merchants in their stores are furnished by Waters-Pierce Oil Company practically at cost.

George P. Jones sells refined oils and lubricating oils, but most of the other companies doing business in Missouri, except as above mentioned, sell lubricating oils only.

Page 2019. Claims that the large percentage of the trade secured and held by Waters-Pierce Oil Company is due to their superior facilities for handling and delivering the products of petroleum.

Says of barrel deliveries in Missouri only about 15 per cent
331 has been wood barrels.

The total monthly pay-roll of the company is about $83,000 a month and for the Missouri division about $6,000 per month.

Waters-Pierce Oil Company handles and sells refined oils, gasolines, lubricating oil, turpentine, linseed oil, cottonseed oil, castor oil, animal oil, grease, paraffin wax, candles, grocers' tanks, oil consuming devices and fuel oil.

Their refined oils, gasoline and lubricating oils are purchased from Standard Oil Company. The other products handled are brought from various other sources.

Pages 2022-2023. Describes the business in Republic of Mexico, how the crude petroleum is purchased from Standard Oil Company, shipped there by steamer, refined in that country, etc.

Says that of all the various products of petroleum sold by Waters-Pierce Oil Company in 1905, the total amount in gallonage was 70,842,846 gallons, and that the gross receipts in dollars from such sales was $14,781,621.

That of refined oils, gasoline and lubricating oils they sold during the year 1905 61,439,000 gallons.

Their tankage capacity in Missouri is one hundred and fifteen storage tanks with a capacity of 25,834 barrels, not including St. Louis. St. Louis city has ninety-seven tanks, holding 55,000 barrels. In all the divisions there are 1,040 storage tanks, holding 253,541 barrels.

Says on December 31, 1905, the company had in stock in its various storage places 10,646,349 gallons of oils and 5,843,548 pounds in grease, paraffin wax, etc., representing the average stock carried by the company. They figure on carrying at all times from thirty to forty days' supply.

That in the last twenty-two years, the time he has been with the company, there has been a gradual decrease in the price of the products of petroleum.

332 Claims that the company has gradually reduced the price, due to increased production to some extent, but largely to increase in their facilities for handling and selling oils.

Outside the City of St. Louis in the Missouri division, he thinks

they had 85 per cent of the sales of oils. Says they have secured that percentage of the sales by their tank wagons, tank stations, cans, iron barrels, agents and salesmen, the quality of oils they have furnished and by their superior facilities over competitors.

Says that Bell Oil Company, which has only been in operation seven or eight months in St. Louis, runs some five or six wagons, Republic Oil Company three and St. Louis Oil Company some eight or ten. Republic Oil Company began five or six years ago with about the same number of wagons; St. Louis Oil Company some ten or eleven years ago with less, and have gradually increased the number of their wagons. Waters-Pierce Oil Company since its organization in 1900 has operated from twenty-five to thirty wagons in St. Louis city, according to the season.

The only tank wagons run by competitors in Missouri division are owned by Mr. Wilhoit—two at Springfield, one at Joplin and one at Aurora.

Says that since he has been general manager of the company the price at which products should be sold have been fixed by the officers of the company, based on cost, marketing expenses, freight, etc.

Standard Oil Company fixes the price of oils that his company buys, and as that price varies so the selling price must vary also, according as it may be an advance or decline.

Page 2033. Explains card quotation of prices of oils, exhibits B to H, O and P. Says these card quotations of prices were sent out regularly to all the trade.

Says the president, vice-president and himself fixed the
333 price of oils and communicated these prices to all the division managers, who in turn communicated with all agents and salesmen and they with the trade and customers in the division.

Republic Oil Company began to do business in St. Louis three or four years ago. He never knew that it was owned by the Standard Oil Company of New Jersey, and he did not know but that it was an entirely independent company.

Says Waters-Pierce Oil Company has been a very active competitor of the Republic Oil Company—in fact, just as much so as of the old firm of Schofield, Shurmer & Teagle. Claims that Republic Oil Company has done business all through the Missouri division.

Says instructions to the salesmen of Waters-Pierce Oil Company have been to go after the business of the Republic Oil Company the same as any other competitor. Says he has not been acquainted with the officers of Republic Oil Company in St. Louis, only that he met Mr. Heyer, local manager of that company, just for a minute three or four years ago. He never had any conversation with the officers of that company in relation to the prices at which oil should be sold.

Neither the Standard Oil Company of Indiana, nor Republic Oil Company have ever had anything to do in fixing the prices at which Waters-Pierce Oil Company sold oils.

Waters-Pierce Oil Company has no relations with Standard Oil Company of Indiana except that of purchaser.

His instructions were that reports should be made wherever prices were being cut by competitors, and if it was considered that their business could not be otherwise held, instructions were given to meet the cuts in prices.

Says his company never cuts below the prices of competi-
334 tors, that with its facilities it could hold its own at equal prices. That they have in many instances been able on account of their facilities to maintain prices at from one-half to one cent higher than competitors.

That they have, instead of lowering the price to meet a cut, in many instances given allowances or rebates in order to meet a cut.

In the Missouri division his company sells prime white and eupion. There are different grades of gasoline, according to the purpose for which they are used..

Waters-Pierce Oil Company sells all the oil it can and has no understanding or agreement with anybody to restrict the quantity sold.

Says he met Maywood Maxon in his office in December, 1902. Denies the statements attributed by Maxon to Finlay—they were not made in the presence of witness.

Cross-examination.

Says that he has always known that the Standard Oil Company of New Jersey owned stock in Waters-Pierce Oil Company—that is for past twenty years. Says he is not quite sure whether he knew that Standard Oil Company owned a controlling interest or not. He knew that reports were being made by Waters-Pierce Oil Company to Standard Oil Company. He knew reports were going, showing the extent and nature of the business of Waters-Pierce Oil Company, the amount of oil sold, profits, etc. These reports were made from the office of the secretary. There was also cash statements sent to 26 Broadway daily, made by the treasurer, Mr. Adams.

Referring to the visit of Maxon, says he knew he came over to see about territorial lines between Standard Oil Company of Kentucky and Waters-Pierce Oil Company.

He knew the same Standard Oil Company was doing business in Missouri from which they purchased oils at Whiting, Indiana.

He knew what cities the Standard was selling in Missouri,
335 and that they had tank stations. The Waters-Pierce Oil Company has no tank stations in this state where the Standard has them. The Standard Oil Company of Indiana does not sell in his territory in Missouri. Says his agents and salesmen reported all competitive business or companies in the territory.

Says he has heard that reports were also made to his company of competitive business by employés and agents of railroad companies.

Says that when they heard of a carload shipment into their territory they would write their agent, ask him what was the matter and tell him to reduce prices. The agent would try to get the order countermanded.

The Waters-Pierce territory has not changed in Missouri, so far as he can remember, since he came to Missouri with the company.

Schofield, Shurmer & Teagle was an active competitor of his company and had no connection with the Standard Oil Company that he knows of. They, S., S. & T., had tank stations at St. Louis and Springfield, and did business in the same way the Waters-Pierce Oil Company did, as far as he knows.

Republic Oil Company succeeded Schofield, Shurmer & Teagle and the tank station at Springfield was then removed.

Waters-Pierce Oil Company purchased the tank stations and equipments of International Oil Works at St. Louis and continued to do business by that company and in that name. It has been a competitor of his company. After it was purchased it continued to do business just as before, and it continued to be a competitor of Waters-Pierce Oil Company and tried to get its business.

Says he understood the Republic Oil Company was owned by Standard Oil Company of New Jersey and that that company owned a majority of the stock of Waters-Pierce Oil Company, yet the Republic and Waters-Pierce Companies were competitors and each trying to get the trade of the other.

336 International Oil Works gets its oil from the tanks of Waters-Pierce Oil Company in St. Louis.

Says McNall as commercial agent does not buy oils, but buys equipments, engines, boilers, etc.

Waters-Pierce Oil Company has never sold in Kansas City, but he cannot give the reason why. Standard Oil Company has not sold in St. Louis because the Waters-Pierce Oil Company sells there.

He cannot tell why his company did not sell oil at Sedalia or go over the territorial line in other places.

Says he knew the line dividing the territory of Waters-Pierce Oil Company and Standard Oil Company of Indiana and that it was understood that his company would not sell beyond that line. He understood that the Standard was prepared to take care of the business over the line—that it had established tank stations, wagon deliveries, etc., and that the field was already coverer. He understood that a line in Missouri had been agreed on between Waters-Pierce Oil Company and Standard Oil Company. Says their agents and salesmen were advised as to the territorial line and advised not to go beyond it, nor to sell any oils in Standard Oil territory.

Formerly orders received by his company, or its agents, for oil from persons residing in Standard territory, was referred to Standard Oil Company to be filled.

Says he heard the Standard Oil Company was a stockholder in Waters-Pierce Oil Company before he became general manager.

Up to two or three years ago the question of fixing salaries was referred to 26 Broadway, but is not referred there now. Referred there for approval or disapproval.

He says that he knows reports were made to 26 Broadway relative to construction matters—construction completed and contemplated—that is, the expenditures for building tank stations, equipments, etc.

337 Now says that the difference in price of oil in bulk and in wooden barrels was from two to three cents per gallon. This difference about covers the cost of wood barrels.

Says prices are fixed on basis of cost, freight and fixed expenses. Freight rates may be the same to given points, and yet oil higher at one of the points because of different conditions—more oil might be handled at one place than another. Does not seem to think that competition cuts a very great figure in fixing prices.

Says his company gets no quotations from independent refineries. No jobbers or other oil companies sell Standard Oil products in this territory except Waters-Pierce Oil Company.

Says they handle no oils in Texas in Union Tank Line cars. All the Texas refineries belong to Standard Oil Company.

Says they supply from eighty-five to ninety per cent of the population with oil in the Missouri territory—the balance furnished by independent dealers—for past four years.

The price of crude oil is fixed by Standard Oil Company.

Says oil has been up and down in price in the last eight years, but the tendency has been to get lower.

During the last five or six years there has been large discoveries of petroleum in Texas, Kansas and Indian Territory, yet he says oil is higher now in St. Louis than it was five years ago. The price in the country would be the same, with expenses of marketing included. Says prices of Waters-Pierce Oil Company have been fixed on basis of price of oil as billed to it by Standard Oil Company.

Prices are fixed by his company to make a profit of from one to two cents a gallon.

During the last two or three years crude oil at Neodesha or Sugar Creek has ranged from fifty to seventy-five cents per barrel of
338 forty-two gallons—says he knows nothing about the cost of refining.

Prime white oil quoted in 1899 at three cents less than in 1905 by Waters-Pierce Oil Company—witness says he cannot explain this.

Although his company manufactures axle grease, it sells none to Standard Oil Company in Missouri. His company does not sell same brand of axle grease as Standard Oil Company, because his company manufactures its own axle grease, but does handle considerable of the same lubricating oils, for the reason that most of this oil is purchased from Standard Oil Company, at least that sold in United States.

He admits that oils have increased in price in the last seven or eight years.

Claims that the facilities and conveniences of Waters-Pierce Oil Company enable them to get from one to two cents more per gallon than competitors, and that because of their facilities competitors had to follow their prices. When a competitor cuts prices they may meet the cut, but never go below—it is not necessary.

Admits that competition in Joplin has an influence in making prices lower there than in Jefferson City, where there is no competition.

Says the reason oil was one and a half cents cheaper in Jasper, Mo., than in Joplin, Mo., in August, 1905, was because the Standard Oil Company went in there and cut their prices and they had to meet the cut. Says he knows of no other point in Missouri, where these two companies have come in competition and caused a reduction in price.

Gasoline is quoted two cents higher in Jefferson City than Joplin, which, he says, may be due to the fact that there are a great many more people in Joplin and much more of that oil is sold there. The tankage capacity at Joplin is two or three times greater than at Jefferson City.

339 *Tabulated Statement.*

(Page 2132.)

In the Missouri division the Waters-Pierce Oil Company has 116 tanks of 1,292,622 gallons capacity and run 32 tank wagons.

(Page 2134.)

In the St. Louis division, including stations in East St. Louis and Illinois, the Waters-Pierce Oil Company has 93 tanks, with a capacity of 2,951,170 gallons *capacity*, and 51 tank wagons.

(Page 2134.)

In all the divisions there are 431 tank stations, 1281 tanks, with a total capacity in gallons of 21,495,089.

(Page 2135.)

In all the divisions there are 154 tank wagon agencies, 266 tank wagons at tank wagon stations and 27 can wagon agencies.

Says that coal oil is usually higher in winter than in summer and gasoline is usually higher in summer than in winter, but he cannot give the reason for this.

(Page 2140.)

Schedule of prices of prime white oil in St. Louis for month of January and August, 1901, to 1906, inclusive.

Also schedule of prices for stove gasoline in St. Louis for same months and years. Showing that each of those products was from two to three cents higher in 1906 than in 1901 and that they both gradually increased in price during those years.

Says their commercial agent in New York, R. H. McNall, would send them quotations of Standard Oil Company prices, by
340 which they know the price they were paying for oil.

Says he advises the St. Louis manager and Missouri division manager of the advance or decline in the price of oil, and they prepare and have printed cards and send out to the trade.

Now says that there is more coal oil consumed in winter than in summer and more gasoline consumed in summer than in winter and that this increased and decreased consumption has an influence on prices.

Says the principal business of the commercial agent of Waters-Pierce Oil Company in New York is to purchase crude oil and supplies for the business in Mexico.

The old Waters-Pierce Oil Company did business in the same territory that the present company has been doing business in since its organization. All the improvements and new stations have been established within those lines.

Says the St. Louis Oil Company, Republic Oil Company, Bell Oil Company and Wilhoit ship in carload lots, but having no iron barrels, they distributed to the trade not reached by tank wagons, in wood barrels, which leak and cause questions of adjustment to come up. After a customer buys a few times that way he goes back to his company, which ships to him in iron barrels or cans and there is no leakage.

Cyrus L. Ackert.

(Pages 2174 to 2335, Inclusive.)

He is manager of the Missouri division of Waters-Pierce Oil Company with offices at St. Louis.

He began work for the old company January 15, 1890. He continued to work for that company until May 29, 1900, when he was employed by the new company, and has worked for it since.

341 He began with the present company as assistant manager to A. A. Lasar, which position he held until April 15, 1901, when he became manager, and has held that position since, with the exception of the time from December, 1904, to September 15, 1905, when he was in charge of the city business in St. Louis of Waters-Pierce Oil Company. Mr. V. H. Crandall was manager of Missouri division while he was in charge of city sales, who had been his assistant and is still acting as such.

Been no change in the Missouri division lines inside the state of Missouri since the new company was organized.

His duties as manager of Missouri division have been looking after marketing goods, attending to correspondence and directing the agents and salesmen. Has full charge of all the business. Agents and salemen made daily reports to him of sales and he in turn reported to the general manager and the accounting department. He has had from eighty-five to ninety-five agents under him at different times. He fixed no prices but got instructions as to such matters from the general manager.

Says a schedule of prices is made out on-e each month and kept at his office. Any changes during the month were noted on these schedules and embraced in a new schedule next month.

Identifies monthly schedules beginning with April 1, 1901, to and including 1905.

He does not know on what basis the selling prices were fixed, only the selling price was furnished him and he knew nothing abo the cost price.

When it was reported to him that some competitor was cutti prices at a given point he would take the matter up with the gene manager with recommendations as to what price should be ma If approved, he would notify the agent of the reduction and the c rent schedule would be altered accordingly. Changes of this ki occurred frequently.

342 Says his instructions have always been to get as much he could, and he has held a large percentage of the busin at higher prices than other people have quoted.

Never gave instructions to cut prices below those of a competit because their facilities were such that they could hold the busin at equal prices.

In the city division the schedule of prices were kept in the sha of cards, because it was only one agency.

The city division included St. Louis, part of St. Louis county, E St. Louis, Granite City, Madison. All changes of prices came fr the general manager and the trade was notified by postal cards.

Schofield, Shurmer & Teagle were succeeded by Republic Company in 1901. Both companies had plants, storage tanks a warehouses at Springfield and St. Louis. There was also sm agencies at Lockwood and Versailles—warehouses where th handled goods in wooden barrels only. Several months after R public Oil Company began business its station at Springfield w moved away and that agency discontinued. The warehouse at V sailles has been discontinued for a year or more and the one at Lo wood about thirty days ago.

Says Republic Oil Company was the strongest competitor th had in the Missouri division and their methods were the same Schofield, Shurmer & Teagle. Republic Oil Company also sold in St. Louis when he was in charge of city division. They w strong and aggressive competitors.

Says that St. Louis Oil Company, George P. Jones & Compa E. M. Wilhoit, National Refining Company or Hannibal Oil Co pany were competitors in the Missouri division, and six or eight oth companies selling mostly lubricating oils. There was no differe between the competition of these companies and Republic Oil Co pany.

343 Says the Waters-Pierce Oil Company pursued the sa course against all companies in the territory as it did agai the Republic Oil Company.

Says Republic Oil Company cut their prices down the Mississi in and tributary to St. Genevieve, St. Mary and Perryville. S that company got most of that trade for two or three years by cutti prices from one to two cents a gallon. Down in that coun there then being no railroads reaching those points, winter suppl of oil was purchased and shipped by boat, and the Republic got good share of the business for three falls. He does not remember

any other specific instance where they cut prices in other places, but says they did do so.

Says he had no positive information that the Standard Oil Company was back of the Republic Oil Company, but he surmised it, and made inquiry of Mr. Heyer, the manager, and was turned down pretty cold.

Says that he had no agreement with any representative of the Republic Oil Company relative to the prices at which oils should be sold in Missouri, nor in relation to the quantity of oil that should be sold in Missouri.

Says he had instructions from his superior to go after the business of the Republic Oil Company just the same as any other company, and he repeated these instructions to his agents.

Says Republic Oil Company, besides cutting prices, had two salesmen traveling out of St. Louis all the time, trying to get the trade, and that company had solicitors in St. Louis all the time, beside the tank wagon drivers, soliciting trade.

Says T. R. Hopkins, their agent at Pierce City, and who testified at Joplin in this case, was discharged about two years ago by V. H. Crandal, his assistant. Hopkins and other agents were paid by New York exchange twice a month—that is, checks drawn by Bank of Commerce on New York Bank. They were made payable to
344 witness. This was done to save exchange charges to the agents. He never had any conversation with Hopkins at Havey House, in Monett, and denies the statements made by Hopkins.

Says they always tried to get at the quantity of oil being sold by their competitors. This information was reported by their agents and salesmen.

They had some railroad agents as their local agents in small places, but they were not employed to furnish information of competitive shipments.

The information as to amount of oil sold was for statistical purposes and for general purposes of information as to the amount of business done by both Waters-Pierce Oil Company and its competitors. It was never used for the purpose of getting orders placed by competitors countermanded, or cutting prices.

H. C. Pierce is a first cousin of witness and C. P. Ackert is a brother, and Andrew M. Finlay is a brother-in-law of H. C. Pierce—Pierce married Finlay's sister.

Cross-examination:

Referring to price schedules made up monthly, they were changed when conditions warranted. Sometimes there would be a general change in the market and at other times local conditions, such as cutting by competitors, would cause a change.

Whenever a competitor made a cut in prices they made a reduction sufficient to get the business. Reductions at local agencies indicate competition.

When competition came into an agency and reduced prices they

reduced them, but did not do so unless a reduction was first made a competitor.

Waters-Pierce Oil Company gets its oils from Whiting, Neodes Franklin, Cleveland and other places.

At Joplin Wilhoit has a tank station with a capacity of ab fifty thousand gallons—not as large as Waters-Pie

345 Wilhoit runs one tank wagon there—Waters-Pierce Oil C pany runs two tank wagons and three dray wagons th Wilhoit's facilities there are practically the same as Waters-Pie Says they can hold the larger part of the trade there as agains man with equal facilities. Says he thinks the trade would rat deal with Waters-Pierce Oil Company than an independent, e though the facilities are the same. Claims that their oil is bette more uniform in quality.

Says oil for Joplin comes from Neodesha, at least the most o Formerly, up to two years ago, it was shipped there from St. L and Whiting.

At Jefferson City they get their oil from Kansas and Whiti Formerly it was shipped there from St. Louis and Whiting.

Oil in iron barrels is quoted the same as in bulk, but it is n in wood barrels because the barrel is sold to the customer while iron barrel remains the property of the company.

Accounts for lower prices in Joplin than Jefferson City, in 19 because there was much more oil sold in Joplin, consequently it less a gallon to handle it. He cannot explain why it was that following month in same year oil was 8½ cents in Jefferson C and 9 cents in Joplin.

When Republic Oil Company bought out Schofield, Shurme Teagle he heard it rumored that it belonged to the Standard Company.

Admits that he sometimes made concessions or gave rebates.

Says he has always gone after the business of the Internati Oil Works just the same as any other company.

Says that from what he saw he assumed that International Works belonged to Waters-Pierce Oil Company.

346 As to sales of oils by Republic Oil Company at St. Ge vieve, Perryville and other river points in 1903 and two years following, says he went to see Heyer, the manager of t company, in relation to the matter, and Heyer would give him satisfaction—intimated that it was none of Ackert's business. Ne tried to see the Republic people before or after about the sale of

There were no fixed or quoted prices at St. Genevieve or Pe ville. The prices at those points were based on the St. Louis pr whatever that might have been, and Republic cut under it.

Says they got some information from railroad clerks as to c petitive shipments, but got no formal reports from them. they had blanks which were filled out from such information their own agents. This information was for statistical purpose

Redirect examination:

Up to the time this suit was brought he says there was very little prejudice among the merchants and trades-people against the Waters-Pierce Oil Company.

Says the policy of the company has been to please and satisfy its customers. They get the best local men for agents, and are very particular to see that merchants are supplied with a good quality of *land* that they get full measure. Ninety per cent of their sales being bulk deliveries or deliveries in iron barrels, the full amount in gallonage sold is always delivered.

Says, in his judgment, ninety per cent of the oils sold by his company in the Missouri division is delivered by tank wagons and in iron barrels and ten per cent in wood barrels.

The Standard Oil Company did not compete with his company.

347 *Edward Von Horten.*

(Pages 2235 to 2277 Inclusive.)

Was originally employed by old Waters-Pierce Oil Company at Houston, Texas, in 1882 as agent. He now has charge of refined oil department of that company at St. Louis, where he has been for a year and two months.

After leaving Houston he became manager of Arkansas division, headquarters at Little Rock.

From 1891 to 1904 he was manager at St. Louis of city department of sales of refined oils.

In December, 1904, he went into business for himself.

Republic Oil Company succeeded Schofield, Shurmer & Teagle in June, 1901.

F. B. Northrup was first manager of Republic Oil Company in St. Louis and continued as such for about a year. That company first operated three or four wagons in St. Louis and increased to five. There was active competition between Republic Oil Company and Waters-Pierce Oil Company. He had charge of city trade and sales by tank wagons and had charge of tank wagon drivers and solicitors. There were about thirty tank wagons. Drivers of tank wagons were also solicitors. Each wagon would have its route and the driver was to solicit all the trade on that route.

Says their competitors in 1901 were St. Louis Oil Company, International and Republic. These companies have continued and later the Bell Oil Company came in as a competitor in February, 1905.

Tank wagon drivers and solicitors were instructed to solicit the trade of all those companies alike.

Says Republic Oil Company at one time cut prices by giving rebates. They did not meet the rebates, but tried in other ways to get the trade—he was instructed from the office to avoid mak-
348 ing cuts and concessions in this instance. They went to other customers of the Republic and told them of the rebates to certain customers, and by those means prevented them making

further cuts. They took no other steps, but let the Republic ta
part of the trade.

Changes of prices were announced to the retail grocery trade
postal notifications, and to the wholesale grocers and other jobbers
cards giving prices in barrels. Tank wagon prices went to all us
of oil, the other cards to wholesale grocers and oil dealers, whi
included competitors.

The other oil companies usually followed the prices quoted
Waters-Pierce Oil Company.

Says he has always been on friendly terms with all the manag
of oil companies in St. Louis. Sometimes sells them oil.

He was in the habit of telling Northrup, or any other manag
that changes in the prices of oil was contemplated before the chan
took effect or before cards were printed, if he was asked about
Such information has frequently been given by phone to Repub
Oil Company, St. Louis Oil Company and other companies.

No company, other than the Waters-Pierce Oil Company, h
issued quotations of prices since he has been in St. Louis, and a
generally followed by the other companies.

Had no agreement of any kind with any manager of Repub
Oil Company, or any one else, to fix the price of oil in St. Lou

Says he knew nothing about the Republic being owned by Stan
ard Oil Company, only that it was rumored that it belonged to t
Standard.

After leaving the Waters-Pierce Oil Company, in Decembe
1904, he incorporated the Southwestern Oil Company. He did n
confer with Mr. Pierce nor anyone connected with Wate
349 Pierce Oil Company relative to the organization of his co
pany, nor did any person connected with that company ha
any interest in his company.

His company began operations in June, 1905, and in Augu
following he sold out to Waters-Pierce Oil Company and went ba
to their employ.

Says he was present when Maywood Maxon called at the office
St. Louis. Denies that Finlay was present, and he heard no co
versation between Maxon and Finlay, but says Maxon as agent
Standard Oil Company at Decatur, Illinois, was there to adjust so
difficulty about certain places in Illinois, where both companies h
been selling. Says they did not come to an understanding a
both companies continued to sell as before. Says he was not pr
ent during the entire conversation, which was between Maxon a
Ackert.

While he was with Southwestern Oil Company he bought all
oil from independent refineries. He handled oils of the Nation
Refining Company. In the three months this company run th
built up a good trade, which was increasing when he sold out.

Says that before the institution of this suit he was constant
hearing that Republic Oil Company belonged to Standard Oil Co
pany. Also says he heard the same of Waters-Pierce Oil Compan

Says he knew the Waters-Pierce Oil Company did not sell
Standard Oil Company territory, and vice versa.

Waters-Pierce Oil Company bought out the International Oil Works in about 1895. From that time it has continued to do an independent competiting business and was competing for the business of the Waters-Pierce Oil Company. It got its oil during all this time from Waters-Pierce Oil Company. Says he saw reports of sales made by this company to Waters-Pierce Oil Company. It is still a competitor of Waters-Pierce Oil Company.

350 Says Republic Oil Company sells about the same grade of oils as his company, but under different brands, and that both companies claim to sell oils of equal grades in every way, but at times says his company has claimed their oil to be better.

Says that his competitors nearly always followed the prices of his company up or down.

In 1894 or 1895 Waters-Pierce Oil Company had quite a war with St. Louis Oil Company when oil sold as low down as three and a half cents per gallon.

Says he does not know how the prices of Waters-Pierce Oil Company are fixed. They are furnished him by C. P. Ackert, the general manager.

Now says that he does not contradict Northrup as to his statement that Northrup got information from him before prices were printed and sent out to the trade.

His company sells in St. Louis brands known as "eupion," their high grade, and "150 prime white" coal oil, their low grade.

Republic sold what they called "palacine" as their high grade, but he does not know the name of their low grade oil.

International Oil Works sells "magic light" as high grade and a lower grade oil.

Says his company has sold a great deal of oil at five cents.

Victor H. Crandall.

(Pages 2277 to 2293, Inclusive.)

He is assistant manager of the Missouri division of Waters-Pierce Oil Company.

He began work for that company in March, 1889, as ledger clerk. After about a year he was made cashier at El Paso, Texas, for the company. He has held his present position since the new company was organized.

351 A. A. Lasar was first manager of Missouri division under new company. In 1901 he was succeeded by C. L. Ackert.

Witness became manager of that division on December 1, 1904, and continued to act as such until December 15, 1905, when Mr. Ackert again became the manager and witness assistant.

He knew T. R. Hopkins, agent at Pierce City, and in November, 1903, witness discharged him, because he was having blacksmith work for his farm done and charged to the company.

Says while he was manager, Hyer, manager of Republic Oil Company, called him up over the phone and asked him about prices at two points, and he gave him the prices—never had any other conversation with him

As assistant manager he visited the territory, looked after the sales, who they were selling and who they were not, the percentage of business they were getting, had charge of the salesmen, made contracts, and had general supervision over the field work.

His instructions to agents as to Republic Oil Company were the same as those given about any other competitor—that is to go after their business.

Says as to the St. Louis territory the Republic Oil Company was the most aggressive competitor they had—it had two salesmen working out of St. Louis. St. Louis Oil Company periodically sent out one man.

Republic Oil Company sold much more oil in the Missouri division than St. Louis Oil Company.

He remembers the Republic Oil Company cutting prices down the river at St. Genevieve or Perryville, but does not remember any other specific instance.

Republic operated the Springfield plant a short time after Schofield, Shurmer & Teagle sold out, and then the plant was removed.

352 Some of their traveling men from Kansas City sold oil in that territory afterwards by barrel shipments. They continued to maintain a barrel agency at Lockwood and Versailles and to supply points around from these agencies. These agencies were supplied from Kansas City or Sedalia. Knows of no instance in the southwestern part of the state where that company cut prices against the Waters-Pierce Oil Company.

When his office was notified of changes in prices his agents throughout the territory were notified.

Says that both Lockwood and Versailles have been abandoned by the Republic Oil Company.

Schofield, Shurmer & Teagle, before they sold out, had a tank station at Springfield, from which they distributed oil to all points around as far as freight rates would permit.

Says he was familiar with the dividing line between the Waters-Pierce Company and Standard Oil Company—the line was respected by each company.

Referring again to sales of oil at St. Genevieve, Perryville and that country, says it was customary for those people every fall to buy a large amount of oil to last through the winter. This was done because the only way to get it shipped was by boat. Schofield, Shurmer & Teagle had also made sales in this territory.

Says his company have stations in that country now, and have got a large per cent of the business—nearly all of it.

Says no other company has an established agency in southeast Missouri except Waters-Pierce Oil Company, while there is a competitive agency in southwest Missouri.

353 *Edward Von Harten (Recalled).*

(Pages 2294 to 2296 Inclusive.)

Says he gave to Northrup the same information as to changes in prices when he was manager for Schofield, Shurmer & Teagle,

as he did when he was manager for Republic Oil Company, and that Northrup is mistaken when he says that it was different.

(2297.)

Form of construction application which was sent in to the company.

A. M. Finley.

(Pages 2300 to 2390 Inclusive.)

Says he is now vice-president of Waters-Pierce Oil Company and has been since June, 1905; and since that time Clay Arthur Pierce has been president of the company.

He became president of the old company in February, 1900, and continued to be such until June 1, 1900; then H. Clay Pierce became president and witness vice-president. He continued as such and H. C. Pierce as president until February, 1904. H. Clay Pierce was elected chairman of board of directors in February, 1904.

R. P. Tinsley was elected vice-president in 1904 and served until June, 1905, and witness was again made vice-president.

Says about six months after Republic Oil Company was organized it was reported that it belonged to the Standard Oil Company, but he had no definite information as to the fact.

354 He did not know Heyer, manager of Republic Oil Company, nor did he know Northrup, who was also a manager of that company.

Never discussed with any one connected with the Republic Oil Company or Standard Oil Company the prices at which oil should be sold in St. Louis or the Missouri territory.

The prices at which oil was sold in St. Louis and Missouri division were fixed by the officers of the company. The general manager would be advised and he in turn would advise the division managers, and so on down to the agents and salesmen.

No limitation was placed on any agent of the company designed to limit or reduce the quantity of oil sold by Waters-Pierce Oil Company.

Denies that he told Maywood Maxon that the manager of Republic Oil Company reported regularly to him, as testified to by Maxon. Admits that Maxon came to his office and talked with him briefly, but says that nothing was said about the Republic Oil Company.

Says the competition between the Republic Oil Company and Waters-Pierce Oil Company was very active. His company went after the business of the Republic Oil Company the same as it did other companies.

He first began with Waters-Pierce Oil Company at Marshall, Texas, in 1878. Transferred from there to the City of Mexico. From there to Galveston, and in 1888 to St. Louis, where he has been ever since.

About the time he was sent to St. Louis he became vice-president of the company and has held an executive office ever since.

Says the company has sold oil in the same territory ever since the time he came to St. Louis—there has been no extensions or cutting off of territory.

355 H. C. Pierce was the executive head of the company when he came and has remained such up to the present time, and his control during that time has been absolute.

Witness was told by Pierce to give Mr. McNall at 26 Broadway, New York, any information he might ask for concerning the business. Such reports were made and forwarded under the supervision of J. P. Gruet, who was at the head of the statistical department.

McNall became commercial agent of the company at 26 Broadway, by Pierce's appointment, in the latter part of 1900, and remained in that position until after this suit was brought, when he was succeeded by Walter Rundell.

McNall's duties have been buying and shipping goods. McNall was first addressed at 26 Broadway and then at his request he was addressed at 75 New Street, New York City.

When construction was desired in a division Exhibit "B3" was used as an application blank and sent in to the home office in St. Louis. There it was passed on by the company and the division manager from where it came was advised as to whether it was approved or not. If approved the construction was made; if not approved, it was not made. This blank was used whenever anything was purchased or built which added to the value of a station or plant.

Monthly statements of these applications were sent to McNall at 26 Broadway, at his request. In 1903, instead of sending a statement or abstract of these applications, a copy of the application was sent to him.

Says in June, 1904, R. P. Tinsley presented a certificate of stock for about 2750 shares and asked that these shares be transferred on the books to M. M. Van Beuren. The transfer was made after consultation with Pierce and John D. Johnson, attorney for the company.

356 When the new company was first organized salaries were fixed by Mr. Pierce, and after the executive committee came into existence they were passed on by that body and finally by H. C. Pierce. They were then put into effect.

Once a year a list of salaries was sent to McNall, commercial agent.

Says he knew of auditors coming from Standard Oil Company and auditing the books of the company; that they were paid by Waters-Pierce Oil Company, by authority of J. P. Gruett, but witness says he did not authorize it.

Company owns about one hundred cars and leases about one hundred and fifty cars from Union Tank Line Company, which are lettered "Waters-Pierce Oil Company." A complete record of the movement of each car is kept, so as to keep track of cars, mileage, etc. No reports of these cars are made to 26 Broadway.

The company gets its oil from the northern refineries in Union

Tank Line cars. It has no interest in these cars. Says they make no reports of the movements of these cars.

He understood that prior to 1900 the Standard Oil Company of New Jersey by itself or through individuals owned a majority of the stock of Waters-Pierce Oil Company.

Prior to 1900, H. M. Tilford, at 26 Broadway, would take and place orders for Waters-Pierce Oil Company, and he had considerable correspondence with Tilford. Supplies were purchased through him. This was previous to 1900.

Prior to the reorganization there was no commercial agent, so-called, at 26 Broadway, but the business transacted by McNall after the new company was formed was transacted by H. M. Tilford prior to its organization.

357 Prior to 1900 Standard Oil Company auditors came to St. Louis to audit the books of the company.

Says after the new company was incorporated and McNall, who had been a clerk in H. M. Tilford's office, was appointed commercial agent for Waters-Pierce Oil Company, located at 26 Broadway or 75 New Street, New York City, the company corresponded with him in regard to supplies, refined and lubricating oils, purchase of crude oil for Mexico, purchase of machinery, etc., and all statements concerning the business of Waters-Pierce Oil Company were sent to him that he asked for.

Says he went to New York City three or four times since McNall was appointed, and saw him about the business of the company. He would also see H. M. Tilford, but did not have much talk with him. McNall had his desk in the office of H. M. Tilford.

Following the appointment of McNall up to fall of 1903, reports were mailed to him at 26 Broadway, and then changed at his request and mailed to 75 New Street since. Says 75 New Street is one entrance to 26 Broadway.

His recollection is that in 1904 he received a letter from McNall requesting that thereafter copies of letters written to McNall be enclosed—these copies to be without address or signature—for distribution.

When Tinsley came, in April, 1904, he was vice-president, witness became president. Backus, who came about the same time as Tinsley, took J. P. Gruet's place. See page 2367 as to confusion in statements of witness.

Says it was not agreeable to him for Tinsley to become vice-president, and witness protested to Mr. Pierce. Tinsley wanted to dictate and to run things his way.

Says that while Tinsley was here running the Waters-Pierce Oil Company there was no changes in the general course of the
358 business. There was no change in the attitude of the company towards the Republic Oil Company.

Says his company first received quotations from refineries through McNall, and then when they made a purchase from a refinery an invoice direct from the refinery would be sent them.

Says that the competition of his company with Republic Oil Com-

pany, St. Louis Oil Company, International Oil Works and other companies has been the same. They have all been treated alike and they went after the business of all of them.

Waters-Pierce Oil Company has owned the International Oil Works since 1900, and have been paying Grenner a salary to run it.

(Page 2391.)

Affidavit of dissolution of Waters-Pierce Oil Company organized May 7, 1878. Dissolved May 28, 1900.

(Page 2392.)

Nineteenth Civil Appeal Reports (Tex.) from page 1 to 21—report of case against Waters-Pierce Oil Company.

(Page 2393.)

Certificate of Incorporation of Waters-Pierce Oil Company, date May 29, 1900.

(Pages 2393 to 2397, Inclusive.)

Abstract of blank reports used in making reports to 26 Broadway, New York City, by Waters-Pierce Oil Company since 1900, which reports show in a general way the business transacted by that company. These reports were mailed to R. H. McNall, commercial agent.

359 *James A. Moffett.*

(Pages 2400 to 2470, Inclusive.)

Resides in New York City. He has been president of Standard Oil Company of Indiana for past three years. Prior to becoming president he was vice-president and general manager of the company. The last position he had held for twelve or thirteen years.

Prior to going with the above named company he had been with Pratt Manufacturing Company of Brooklyn, New York, which was a manufacturer of oil. June, 1889.

He first became connected with the oil business in Virginia in 1869 and has been continuously in the same business ever since.

The Pratt Manufacturing Company was connected with the Standard Oil interests.

When he became connected with the Standard Oil Company of Indiana in July, 1889, it was building a refinery at Whiting, Indiana, but did not begin operating it until about three months after that time. In the beginning it was only a manufacturing company. Its predecessor in marketing oils in Missouri was Consolidated Tank Line Company.

Says the Whiting refinery used the crude of Ohio, was very large

and supplied the trade largely of the West, Southwest and Northwest, until oil was discovered in Kansas in 1890 or 1891.

In 1897 his Company built a small refinery at Neodesha, Kansas. Two or three years ago his company built a refinery near Kansas City at Sugar Creek.

These refineries buy the crude petroleum and manufacture it into naptha, wax, gas oil, fuel oil, refined oil, lubricating oil and all the products of petroleum.

360 Crude for Sugar Creek and Neodesha refineries comes from Kansas and Indian Territory fields.

At this time the Whiting refinery gets its crude mostly from Kansas and Illinois fields, and they get none at all from Ohio. There is a pipe line extending from Kansas to Whiting.

Says the business has been increasing every year since the refinery was built at Whiting.

Standard Oil Company always marketed oil as a wholesaler and in the Fall of 1892 or Spring of 1893 it began to market as a retailer or distributor. Prior to that time the distributing was done in Missouri by Standard Oil Company of Kentucky or Consolidated Tank Line Company.

His company, however, did not begin to market in Missouri until about 1896, when it succeeded the Standard of Kentucky. He then found that company selling in one part of the State and Waters-Pierce Oil Company in another part. This condition was not changed but respected. He had no agreement whatever with Waters-Pierce Oil Company to maintain the division of territory.

Says it was true and a general practice for orders to be transferred from one company to the other. That is, orders received by one company from a merchant or buyer located in the territory of the other, would be transferred to be filled by the company by whom the territory belonged. This was done because the Waters-Pierce Oil Company was a buyer and marketer of the goods of Standard Oil Company of Indiana.

There was never any agreement between Standard Oil Company of Indiana and Waters-Pierce Oil Company except to sell them oil from day to day.

Good equipments for doing business are tank stations established at intervals so that each station will supply a radius of twelve

361 miles. Then goe. on to describe the equipments of a tank station. See page 2409. Says it would cost about $200,000 to install a marketing station in Kansas City or St. Louis. In order to do business in Waters-Pierce Oil Company territory it would cost the Standard Oil Company of Indiana a very large amount of money, because it takes large expenditures to install stations, tanks, wagons, lands, leases, etc.

Their territory is divided up between agents and each agent is confined to certain limits within which he may do business.

The dividing of a territory into sub-agencies, like Kansas City and St. Joseph, is a managerial question.

While he was vice-president and general manager of Standard

Oil Company of Indiana the general offices of the company were i Chicago.

In regard to the purchase of the stock of goods of Schofield Shurmer & Teagle, says when he went to New York City in 1901 he assisted Mr. McDonald, John Teagle and Walter C. Teagle t agree upon a valuation of such stock.

A company was formed to take over the business of Schofield Shurmer & Teagle. Several names were suggested but finally "Republic Oil Company" was agreed upon. Says Mr. Drake recommended Turrell for secretary of the company, who came from Standard Oil Company of Indiana at St. Joseph, Missouri.

Schofield, Shurmer & Teagle had a high grade Pennsylvania oil called "Palacine" which did not come from any Standard Oi Company. This was a higher priced oil than the ordinary grad of Standard Oil brands.

Says he arranged with Walter C. Teagle, who had been connected with Schofield, Shurmer & Teagle, to take charge of the busines of Republic Oil Company. Wanted him in order to run the business of the company as an independent business.

362 Articles of incorporation of Republic Oil Company was signed by George B. Wilson, F. A. Turrell and J. R. Taylor George B. Wilson was chief accountant at that time of the Standard Oil Company of New York. James R. Taylor was stenographer for W. H. Tilford, who was one of the directors of the Standard Oil Company of New Jersey. F. A. Turrell, whose correct name was L. H. Turrell, was a clerk in Standard Oil Company's office at St. Joseph, Missouri.

Denies that he has any recollection of Turrell complaining to him that the initials "F. A." in the articles of incorporation of the Republic Oil Company were wrong, but says that he may have cautioned him about the business of the Republic to keep quiet or something of that kind.

Never was any agreement or understanding between Waters-Pierce Oil Company, Republic Oil Company, and Standard Oil Company of Indiana, about fixing or maintaining prices.

Says he never gave any information to any one connected with Waters-Pierce Oil Company about the facts connected with the organization of Republic Oil Company.

There is a Standard Oil Company of Kansas but it has never been a marketer of oil, its sole business has been that of refining. It operates the refinery at Neodesha. Witness was president of that Company when first organized and remained such for several years. He ceased his connection with that company in 1901. In 1902 this refinery was enlarged very much and has extended its sales since—probably sells to Waters-Pierce Oil Company.

He came to New York City in 1901 and became president of Standard Oil Company of Indiana and a director in Standard Oil Company of New Jersey, with offices at 26 Broadway. Prior to that time he was located at Chicago.

363 When at Chicago the Standard Oil Company of Indiana made reports to 26 Broadway to some person but he does

not know who. Full reports of the business were made covering the whole business of the company. H. M. Tilford was the sales agent of the company at 26 Broadway. He had charge of the export business and outside sales. He communicated with Tilford in relation to the general business of the Indiana Company. Tilford's title was "Sales Agent."

Tilford at one time was a member of a committee at 26 Broadway known as Trades Committee.

Standard Oil Company of New Jersey is a refiner of oil and holds stock in other companies.

At the time of the organization of the Republic Oil Company he understood that it was Standard Oil property.

Says Standard Oil Company of New Jersey held practically all of the stock of Standard Oil Company of Indiana, but it was carried in the name of individuals.

Says he was succeeded at Chicago by Mr. Drake and he by P. C. Crenshaw, as general manager of the business of Standard Oil Company of Indiana.

Says the board of directors of Standard Oil Company of New Jersey has general control of the business of that company and looks after the business of those companies in which it held a controlling interest, except, he says, that board had very little to do with the business of Waters-Pierce Oil Company.

Relative to the division in Missouri, between Waters-Pierce Oil Company and Standard Oil Company, says his company did not invade Waters-Pierce territory nor did that company invade the territory of his company.

Says when Republic Oil Company bought out Schofield,
364 Shurmer & Teagle he sent out Mr. Conlin, then manager for his company at Kansas City, to inspect the properties purchased.

Schofield, Shurmer & Teagle did not market oils of Standard Oil Company, but the Republic Oil Company did.

Since 1901 thinks the Standard Oil Company of Indiana sold its oils in Missouri to Waters-Pierce Oil Company and H. A. Williamson & Co., and to no other companies to amount to much. H. A. Williamson & Co. market the oils of that company in a prescribed territory in the northwest part of the state.

Says there was a division of territory between his company and Williamson & Co., and his company and Waters-Pierce Oil Company, in Missouri, and that the division was respected by all three. He does not remember of his company selling oil to any other companies in Missouri, except Waters-Pierce Oil Company and Williamson & Co.

Says the "caline" of his company was a Pennsylvania high grade oil and corresponded to the "palacine" of the Republic Oil Company. Both these last oils were refined by his company.

At all times the general offices of Republic Oil Company have been located at 26 Broadway and its officers have been Standard Oil men.

The board of directors of the Standard Oil Company of New Jer-

sey considered the marketing and refining of oil by all interests that were owned by that company in a general way.

Says he did not establish tank stations at Joplin, Springfield and other points because the company was already selling there by selling to Waters-Pierce Oil Company.

From 1901 to March, 1905, there was no competition in Missouri between the Standard Oil Company of Indiana and Waters-Pierce Oil Company in Missouri.

365 There is a pipe line from Sugar Creek to Whiting owned by Prairie Oil & Gas Company, a company owned by Standard Oil Company of New Jersey. Sugar Creek is not on the main line of this pipe line but a branch connects it with the Sugar Creek refinery.

Standard Oil Company of Kansas is owned by Standard Oil Company of New Jersey.

The pipe line spoken of above connects the oil producing territory of Kansas and Indian Territory with Whiting and then extends on East to the sea board.

Says there is about one million two hundred and fifty thousand dollars invested in the refinery at Sugar Creek near Kansas City, and in capacity is from one thousand to twelve hundred barrels a day. It was located there because it was a point near the oil fields and Kansas City as a distributing point. The proximity of the Missouri river was another consideration.

Says the Pennsylvania crude is more valuable because it produces more refined product than the crude of the West. The crude of the West will turn out just as good oil but not so much of it.

Says an order placed with Standard Oil Company of Indiana for oil by Waters-Pierce Oil Company would likely go to Chicago and it would there be determined from what refinery it would be shipped, depending on the place where it was wanted.

Walter C. Teagle.

(Pages 2470 to 2529, Inclusive.)

He is now connected with the export department of Standard Oil Company at 26 Broadway.

He was an employé of the firm of Schofield, Shurmer & Teagle—his father was a member of the firm, that is John Teagle. Also Henry Teagle was a member of the firm.

His experience in the oil business dates from 1899 when he took employment with Schofield, Shurmer & Teagle.

366 That firm done a distributing business through the West and sold to jobbers at various points in the United States. They had a small refinery at Cleveland with a capacity of from ten to fifteen thousand barrels of crude a month. There was also a refinery at Scio—the Scio Refining Company, which was owned principally by members of the firm of Schofield, Shurmer & Teagle. Also members of that firm owned the Cleveland Refining Company.

In Missouri the firm of Schofield, Shurmer & Teagle had main

bulk station at St. Louis and Kansas City and sub-stations at Springfield, St. Joseph, Clinton and Sedalia. The firm was in business in Missouri fifteen or twenty years. It had quite an extensive business and was the leading firm among independents. The leading brand was palacine, a high gravity Pennsylvania oil, and was worth from three to four cents more than the ordinary oils of Standard Oil Company. They also had special brands of lubricating oil and gasoline which were sold higher than the ordinary product. Such as red cross gasoline, ideal valve oil, ideal engine oil and golden axle grease. These brands became well known in the trade.

Says the sale of the business and assets of Schofield, Shurmer & Teagle was conducted by John Teagle, representing the firm, and Alexander McDonald. Witness says he negotiated the sale at the same time to the Republic Oil Company of the Scio Refining Company with Mr. Moffett.

Witness was made vice-president and general manager of Republic Oil Company when it was organized and he continued in that position until October 1, 1903. As such he had full charge of all the business in all its departments.

After the unfinished products on hand were worked up the refineries at Cleveland were dismantled and the same thing was done with the Scio refinery. After this the Republic Oil Com-
367 pany bought the larger part of its supplied from Standard Oil Company. They continued however, to get a large portion of high grade oils from Pennsylvania refineries. About twenty-five or thirty per cent of their business was in high grade oils. Says he not only held the business of Schofield, Shurmer & Teagle but increased it.

Republic Oil Company retained all the employees of Schofield, Shurmer & Teagle except three.

The plant at Springfield, Mo., was dismantled some time after the organization of the Republic Oil Company because it was not doing a great amount of business. They had plants at Clinton and Sedalia not very far away, which were sufficient.

The other plants in the State were continued and covered the same territory that was covered by Schofield, Shurmer & Teagle.

Says L. H. Turrell, who was sent to Cleveland with Republic Oil Company, was not competent to do the work he was sent there to do and as a result he resigned. Also says the work of H. C. Hardcastle was unsatisfactory and he was incompetent.

Does not remember giving instructions to Northrup, manager at St. Louis, to go after the business of independents, but not the Standard Oil Company.

Shortly after Republic Oil Company was organized it was attacked by independents and accused of being a Standard Oil company.

Says he remembers the letters produced in the deposition of Northrup, dated June 12, 1901, in relation to the reports that Republic Oil Company was a Standard Oil Company, and that he never gave any other instructions other than those contained in his letter. At that time he says the Republic Oil Company was an independent

company and he continued to run it for years as an independe
company.

368 The negotiations for the sale of the property of Schofiel
Shurmer & Teagle, Cleveland Refining Company and Sc
Refining Company were made with McDonald, Moffett and W. I
Tilford, all Standard Oil men of 26 Broadway. The purchase pri
was paid by Republic Oil Company and was agreed to or fixed b
Mr. Moffett. All the dealings that witness had with Moffett we
at 26 Broadway. The negotiations were completed before the R
public was organized. It was understood that a corporation wou
be organized to take over the property. After the incorporatio
some months, he learned that the original incorporators were Stan
ard Oil employees.

The consideration agreed on for all the properties sold to Repu
lic Oil Company amounted to something over a million dollars.

He was a stockholder in Republic Oil Company as long as h
was connected with the company. When his connection ceased h
reassigned his stock—never paid anything for it.

All communications to C. L. Nichols, president of Republic O
Company, were addressed to him at 75 New street, New York Cit
Reports of the company were made there. Nichols had his offi
next to Mr. Jennings.

Wilson was first President of Republic Oil Company. Nicho
became president in the Fall of 1901.

When he quit Republic Oil Company in October, 1903, he b
came a member of the export department of Standard Oil Co
pany, but does not remember which company, and still holds th
position.

Says Republic Oil Company continued the business on the sam
plans and policy once pursued by Schofield, Shurmer & Teagle—th
distributing business was carried on in just the same way and the
handled the same oils. Says this company was a very activ

369 competitor of both Standard Oil Company and Waters-Pier
Oil Company in Missouri.

Says that the reports that Schofield, Shurmer & Teagle had so
out to Standard Oil Company were not true that the sale was mad
to Republic Oil Company.

The Republic Oil Company was an independent Company and
competitor of the Standard and agents were instructed to state th
the company was independent.

He did not know that the Waters-Pierce Oil Company was
Standard Oil interest but he assumed that there was a connectio
between it and the Standard Oil Company.

He regarded the Standard Oil Company and Waters-Pierce O
mpany as competitors of the Republic Oil Company and he i
ucted the agents of the latter Company to get all the busine
of the other two companies they could.

The building at 26 Broadway, New York City, known as Standa
Oil Building, is fifteen stories high and extends from Broadway
New street. Where it faces on Broadway it is numbered 26 an
where it faces on New street it is numbered 75.

When Republic first bought out Schofield, Shurmer & Teagle, Frank B. Northrop was manager at St. Louis and remained manager there for the company for about a year. He was succeeded by W. S. Heyer, who was there when he left the company.

As general manager of the Republic Oil Company he gave Mr. Northrop no special instructions more than to get all the business he could from Waters-Pierce Oil Company as well as all other companies. So far as competition was concerned the same policies were pursued by the Republic as by Schofield, Shurmer & Teagle. Says he had no personal acquaintance with any of the officers of the Waters-Pierce Oil Company and never had any correspondence with any of them.

370 And the same competition was continued between the Republic Oil Company and Standard Oil Company of Indiana as had been carried on by Schofield, Shurmer & Teagle.

Says when he quit the Republic they were getting twenty-five or thirty per cent of their oils from the Standard Oil Company. The matter of the purchase of oils was left largely to his discretion and he bought where he could do the best.

Originally he placed orders for Standard oils with C. L. Nichols at 26 Broadway and later with Bogardus at Chicago.

C. L. Nichols.

(Pages 2529 to 2564, Inclusive.)

Is president of Republic Oil Company and has been since October, 1901.

He has had twenty-eight years' experience in the oil business.

Just prior to becoming president of the Republic he was assistant to Walter Jennings at 26 Broadway, New York City. Jennings was sales agent for Standard Oil Company of New York. He was with Jennings about two years. Prior thereto he was with C. M. Coburn at the same place—he was the predecessor of Jennings—was with Coburn about five years. Prior to that he was in the field with Standard Oil Company of New York. He was with this company at Elmira, New York, for eighteen years.

His office as president of Republic Oil Company was 1002 Standard Oil building, or 26 Broadway. For a short time L. H. Turrell was secretary of the company and then W. T. McKee became secretary and has occupied that place since. As president he has performed such duties as devolve upon a president but the business

371 has been actually run by Walter C. Teagle.

Says the company done business in eight or nine Western States including Missouri.

He ordered the station at Springfield, Missouri, dismantled in 1901, because it was a small out-of-the-way place and not a paying station. In 1903 the station at Clinton was closed because the business of that station could be done from Sedalia which was not very far away.

His company sold all grades of oil but made a specialty of "pala
cine" a high grade Pennsylvania oil—in fact, the brand was copy
righted. Thirty or thirty-five per cent of illuminating oils sold by
the Republic was palacine, which increased to fifty *to* sixty per cen
in 1905.

Every effort was made to preserve the good will of Schofield
Shurmer & Teagle—that was their stock in trade, a part of their
purchase. Says they had to sell common grades of oil in order to
sell palacine, because all merchants had to handle a cheaper grade
of oil, but special efforts were made to sell palacine.

The purchase of oils was left almost entirely to Mr. W. C. Teagle
but he was instructed to apply to Bogardus when he bought oils
from the Standard Oil Company.

At first they got twenty-five or thirty per cent of their oils from
Standard Oil Company and later a larger per cent because it could
be bought cheaper. They got the palacine as well as common brands
from Pennsylvania—from independent refineries. Also bought from
Atlantic Refining Company at Franklin, Standard Oil interest.

The affairs of the Republic Oil Company were conducted as a sepa
rate and distinct corporation absolutely, because it was neces
372 sary to conduct it that way in order to do the business o
Schofield, Shurmer & Teagle, which had been an independen
firm. The business of Schofield, Shurmer & Teagle had been buil
up so that it had a very large business, and the principal value o
its business consisted in its trade in high grade oils. The inde
pendents made assaults on its high grade business. The cheape
oils were sold as a necessity to market the high grade oils.

No agreements or understanding between his company and Stand
ard Oil Company of Indiana to maintain prices, nor as between i
and Waters-Pierce Oil Company. No agreement as to territoria
division, the Republic Oil Company operating as an entirely inde
pendent company.

He did not own the large amount of stock of his company whic
stood in his name, but he held it for the Standard Oil Company o
New Jersey, and all the other stockholders of the company held th
same way.

In addition to his work as president of Republic Oil Compan
he has been connected with Standard Oil Company of Indiana unde
L. J. Drake, who is New York sales agent of that Company, wit
offices at 26 Broadway.

While he was assistant to Jennings, the duties of Jennings wer
enlarged so as to take in Standard Oil Company of Indiana, and h
was succeeded by L. J. Drake. Witness continued during the whol
time of his presidency of the Republic Oil Company to be assistan
to those gentlemen.

A sales agent at 26 Broadway, represents the various marketin
interests of the Standard Oil Company. He has charge of a certai
section of the country or territory. Mr. Jennings in a general wa
looked after the marketing of oils of Standard Oil Company o

Indiana. He would be consulted about the establishment of a new station, etc.

373 George B. Wilson, whom he succeeded as president of Republic, had been chief clerk in the treasury department of Standard Oil Company of New York.

Says J. R. Taylor, who was assistant secretary of Republic Oil Company and stenographer to W. H. Tilford, first notified him that he had been elected president of the company. W. H. Tilford was a member of the executive board at 26 Broadway. Jennings afterwards became a member of that board when he was succeeded by L. J. Drake.

Says he does not know of a Domestic Trades Committee so called, but there were gentlemen associated together who represented the different interests, of which Jennings was one, who would meet to consult. It has charge of the conduct of the business of all Standard Oil interests. It was the executive head of the Standard Oil Company. Says the Republic Oil Company was not represented on this Committee; the Standard Oil Company was represented, but does not knew whether the Waters-Pierce Oil Company was or not.

He received reports from Republic Oil Company and showed them to Jennings and Drake. Says his salary was increased five hundred dollars a year when he became president of that company.

It was a surprise to him when he was notified that he had been made president of the Republic Oil Company. He had discussed the matter some with Mr. Jennings, but he was not told that he would be made president.

He received dividends on the one hundred and fifty shares he held in Republic Oil Company and turned them over to Standard Oil Company of New Jersey; that, is the treasurer, William G. Rockefeller.

After he became president of the Republic his name remained on the door just as before. The name of the company was not
374 put on the door and mail for the Company was directed to 75 New Street. Does not know at whose instance that was done.

The general management of Standard Oil Company of Indiana, and Republic Oil Company was centered in the offices occupied by him and Jennings. At the same time the two companies were active competitors.

Says the station at Sedalia has been sold to Standard Oil Company and that company is handling and selling high grade or palacine oils. They still maintain their stations at Kansas City and St. Louis, but have let out most of their employees. This has all been done since the institution of this suit. The purpose is to sell out to the Standard.

If an injunction had not been served the Republic Oil Company would not be out of Missouri entirely.

Says his company sold out all its business to the Standard Oil Company in all the States where it has been doing business. The papers have so thoroughly advertised this case and the admission that Standard Oil Company of New Jersey owns the stock of the

Republic Oil Company that it has served its purpose. Its purpose was to increase its business and maintain and keep this palacine brand they purchased as a trade mark from Schofield, Shurmer & Teagle and which was their principal feature in their business in refined oil. The sale was made to Standard Oil Company of Indiana for $231,000.

The Republic has no existence now except at St. Louis and Kansas City in Missouri. These stations have not yet been sold.

At places where his company has abandoned the business Standard Oil Company continues to sell the palacine brand of oil.

At the time he became president of Republic Oil Company he did not know anything about Waters-Pierce Oil Company. Had
375 no communication, either verbal or by letter, with anyone connected with that company, in relation to the business of selling oil. There was no agreement between the two companies as to the sale of oil in St. Louis in any manner whatever.

During the time he was president of Republic Oil Company he knew that it was owned by Standard Oil Company of New Jersey and that that company owned a controlling interest of the Standard Oil Company of Indiana, but says that he did not know that the New Jersey Company owned any interest in the Waters-Pierce Oil Company.

Says he knew R. H. McNall at 26 Broadway well. He was commercial agent of Waters-Pierce oil Company. His office was 1209 Standard Oil Building and he was assistant to H. M. Tilford. He did not change his office when he became commercial agent. Says he does not know what Tilford's position was, but he was looked upon as manager of agents and was a big man at 26 Broadway. Does not know what territory his jurisdiction covered.

Says there was no friendship between the Republic Oil Company and the Standard of Indiana and Waters-Pierce—they went after each other's business vigorously. The Waters-Pierce Oil Company was a mean competitor.

Republic Oil Company bought oils from Warren Refining Company and Lake Carriers Oil Company, both independent companies, having no connection with Standard interests.

Says he had no business connection whatever with R. H. McNall, commercial agent, and never discussed with him the question of competition with Waters-Pierce Oil Company.

He thinks the Standard Oil Company of Indiana is the largest marketing company among the Standard Oil Companies.

376 *George B. Wilson.*

(Pages 2564 to 2576, Inclusive.)

He is not engaged in anything just now. He resigned from Standard Oil Company about two and a half years ago. Was chief accountant for New York Standard Oil Company located at 26 Broadway. He had been in the Standard Oil offices for about twenty

seven years. He resigned on account of blindness—had no trouble with Standard people.

He was incorporator of Republic Oil Company and became its first president. He was acting simply as an accom-odation president until some other person could be found. He was president for three or four months or until Mr. Nichols was elected. He remained a director for the Company for awhile. Thinks the stock issued to him remained in his name until 1903. He had no interest in the company—he was holding the stock entirely for Standard Oil Company.

Remembers of meeting Turrell after the papers were signed—was merely introduced to him—had no conversation with him.

When it was found out that Turrell had signed the initials F. A. when his correct initials were L. H. his resignation was requested and was filed in the name of F. A. and he was re-elected to the office he had held by his correct name, L. H. Turrell.

Lives at East Orange, New Jersey. Says Frank Wilson is an employé of Standard Oil Company but is not related to witness. He was in the office as a bookkeeper under witness.

When the Republic Oil Company stock was issued to him he assigned it in blank, but just when Frank Wilson became
377 a stockholder, or it was assigned to him, witness does not know. He did not retain the certificate. Three thousand shares stood in his name.

L. J. Drake first spoke to him about becoming an accom-odation president of Republic Oil Company.

Says he thinks he signed the articles of incorporation up in M. Doremus' office who was a Notary Public. Does not remember whether he saw either of the other two incorporators sign it or not.

Arthur Theodore Doremus.

(Pages 2576 to 2578, Inclusive.)

At 26 Broadway, New York City, and is connected with Standard Oil Company. Says in 1901 he was a Notary Public and took the acknowledgment of the incorporators of Republic Oil Company. Says Turrell came before him personally. Thinks that Turrell and Taylor were before him both at the same time and that Turrell was introduced to him by Taylor.

William S. Heyer.

(Pages 2578 to 2612, Inclusive.)

Now resides at Baltimore, Maryland. He was at St. Louis about four years as manager of Republic Oil Company. He left St. Louis in November, 1906, to take a position with Standard Oil Company of New Jersey.

Prior to going to St. Louis he had been manager of Cleveland Refining Company when it belonged to Schofield, Shurmer & Teagle. He had also been with that firm as manager at Battle Creek, Michigan.

When with Cleveland Refining Company he was marketing for them at Columbus, Ohio.

Thinks he went to St. Louis as manager of Republic Oil
378 Company in August, 1902. Before this he was with the Republic Oil Company at Columbus a short time after it bought out the Cleveland Refining Company.

The special effort of the Republic Oil Company was on high-class oil—that is, they made a special effort to push the sale of palacine oil. At first this specialty business was not so large, but towards the last it run from fifty to sixty per cent of the business.

Does not know from what companies his oils came from, because the orders were placed at Cleveland, the headquarters of the company.

At St. Louis he sold to the city trade and had two traveling men going out of St. Louis. The ordinary oil sold by that company came from Whiting; at least, the large per cent of it.

Had no agreement with Waters-Pierce Oil Company or Standard Oil Company relative to prices, quantities or amounts of oil to be sold, or in any other manner respecting the trade.

In St. Louis, the St. Louis Oil Company, International Oil Works, George P. Jones & Co., Bell Oil Company, Waters-Pierce Oil Company and others were his competitors. Standard Oil Company of Indiana did not sell oil in St. Louis.

He succeeded Mr. Northrop in St. Louis as manager of Republic Oil Company. Northrop went to Chicago as an employé of the company there. He went to St. Louis at the direction of Walter C. Teagle, who was vice-president and general manager.

Says he got a circular letter from Walter C. Teagle not long after the organization of the company, denying the newspaper reports that Republic Oil Company was a Standard Oil interest.

He competed with Standard Oil Company and represented to the trade that the Republic was an independent company and not
379 connected with Standard Oil Company, and made the same claim with reference to the Waters-Pierce Oil Company.

During the time he was at St. Louis, the oil he got from Whiting, Indiana, was consigned to Republic Oil Company by R. M. Andrus as consignor and not by the Standard Oil Company. He does not know why this method was followed.

His principal "drive" in St. Louis was on high-grade Pennsylvania oil, which not only did he claim to be better oil than that sold by Waters-Pierce Oil Company, but was better oil. The Waters-Pierce Oil Company got oil from Whiting also. Republic did not get its high-grade oil from Whiting.

All his competitors claimed they sold a high-grade oil, but it did not give the same satisfaction as that of Republic Oil Company.

Says they got some thirty or forty per cent of their oils from Whiting.

They did not pay for the oils that came from refineries from the St. Louis office. They did occasionally pay for what was called "fill-in" orders—oil purchased from a competitor when they ran short and did not have time to await a shipment.

He would sometimes call up Von Harten, manager of the bulk department of Waters-Pierce Oil Company in St. Louis, over the telephone, and get from him the information of an advance or decline in prices, and he would follow a decline or advance, whichever it might be. As a rule, he was notified in advance of advances or declines in prices over the telephone by Von Harten. So far as the tank wagon sales were concerned, the Waters-Pierce Oil Company fixed the prices of oils. The tank wagon sales was the large part of the business of the company in St. Louis.

He was not restricted to any territory, but sold anywhere in the State that they could.

380 Says he did not communicate with any other company relative to the advance or decline in the prices of oils.

The Waters-Pierce Oil Company made prices in St. Louis openly — they sent out cards announcing the changes to all the trade, so he understood.

Says he had no arrangement or understanding with Von Harten that the Republic would follow the price of Waters-Pierce Oil Company or that that company was to fix the prices.

On one occasion the St. Louis Oil Company made an underhand cut on prices and they met the cut, but this was the only instance when his company followed that company. The Waters-Pierce Oil Company reduced at the same time to meet the cut of the St. Louis Oil Company.

The Waters-Pierce Oil Company, during the entire time that he was there, was the largest seller and jobber of oil in the city, and as such controlled the market.

He had no consultation with Von Harten about the price at which the Republic Oil Company should sell oil in St. Louis.

Waters-Pierce Oil Company fixed the prices of oil for all the other companies in St. Louis, that is to say, the other companies followed its prices. Says in following the prices fixed by this company he was following his instructions from Cleveland to follow the market.

His company was an active competitor of Waters-Pierce Oil Company and drummed their trade the same as the trade of other companies.

But there was no competition between his company and Waters-Pierce Oil Company as to prices on tank wagon sales.

Before he would follow the decline or cut made by the St. Louis Oil Company he referred the matters to headquarters at Cleveland—says he done this of his own accord.

He usually got telephone information from Von Harten

381 from twelve to twenty-four hours in advance of printed card quotations, and followed these prices without referring to the Cleveland office.

He followed the prices made by Waters-Pierce Oil Company, but no other company. Changes made by Waters-Pierce Oil Company usually went into effect the next morning after he would get phone notice of the changes. That company was the only one in the city which issued cards giving quotations on prices.

Says he and Von Harten were personal friends and remained so during the time he was in St. Louis.

There was no executive board at St. Louis that met to fix prices for Republic Oil Company. He did not know the cost price of oil, simply got an invoice giving the kind of oil and gallonage without any price. Had nothing in his office at St. Louis as a basis on which he could fix the price of oil independent of Waters-Pierce Oil Company or other companies.

Their palacine in barrels was sold from a cent to two cents higher than the high grade of Waters-Pierce, but from tank wagons it was sold at the same price as that company's "eupion" brand.

Says he had met C. P. and C. L. Ackert, but had no business dealings with them. Never discussed prices with any officers of Waters-Pierce Oil Company.

One of the Ackerts called him up once about cutting prices at Perryville—accused his company of cutting prices down there—says they did not do so.

Says he never intentionally cut prices as against Waters-Pierce Oil Company, nor gave rebates unless they gave them first.

Says they did sell customers of Waters-Pierce Oil Company at Perryville. They may have offered some inducements because of the large sales, the merchants then buying a winter's supply to be shipped by river before the river froze up, but they did not purposely cut prices. There was quite a contest between the two companies for that business during several years.

382 *P. C. Crenshaw.*

(Pages 2612 to 2649, Inclusive.)

He is general manager of the sales department of the Standard Oil Company of Indiana, with offices at Chicago.

He has had twenty-one years experience in the oil business in various capacities.

He was at Kansas City as local manager of Standard Oil Company for a year in 1900. About May 1, 1901, he went to Chicago as assistant general manager and was made manager in October 1901.

He found that his company was selling as a distributor in a part of Missouri, and as a wholesaler in the remaining portion. The territory in which they had stations included Kansas City and vicinity and the northern part of the state. This condition he found when he went with the company. No agreement about this division so far as he knew.

Says they have fifty-nine tank stations in Missouri. To equip and furnish these stations, the Kansas City station would cost seventy five to one hundred thousand dollars, eight or nine others five or six thousand dollars each and the remainder two or three thousand dollars each. Including oils and gasoline the company sells some eight and a half million gallons a year at its tank stations in Missouri.

The refinery at Sugar Creek is very large—will compare with Whiting.

The business of the company is divided into divisions and each division is separate and distinct from the others, and allotted certain territory. Says they have found this to be the most profitable and economical system of conducting the business, in fact the only way to successfully operate it.

383 The company does not do business in Missouri other than in its own name, in other words, is not doing business through some other name or company.

Has no personal knowledge of rebates being paid by the company in Missouri or elsewhere, and it is decidedly contrary to the policy of the company.

No agreement between his company and the Republic Oil Company or Waters-Pierce Oil Company, to fix or maintain the prices of oil.

Says he did go to Kansas City and try to settle a difficulty between A. H. Gardner of the National Oil Company and Henry Teagle of Republic Oil Company, who had engaged in a war of rebates and demoralized the trade. Hurt the business of the Indiana Company because they were taking its customers away.

Says he had no more influence over one man than the other, simply intervened between them in the interest of peace and the oil business. Says he did not tell Gardner or intimate to him that he had any particular control over the Republic employés. All he did he says, was to ask each of them as a friend to meet together and talk over the business—this was some time in 1902.

Says he thinks there was one or two new stations established by Standard Oil Company of Indiana, in Missouri, since 1901. This company had no "bogus" companies, or companies operating as a blind, in Missouri.

Speaking of the meeting at Kansas City in 1902, when he got Gardner of the National Oil Company and Teagle of Republic Oil Company together to adjust, if possible, their rebate fight, says he got them together in a room at the Coates House, and when Teagle took out some papers and wanted to talk business, he asked him to put his papers up and not talk business there. Says he and Mayer, manager of Standard Oil Company of Indiana, who was also there, left Gardner and Teagle in the room and went below. Says

384 he had no further conversation with Gardner about the rate troubles. They had, however, talked over the situation and troubles while at luncheon at the Baltimore Hotel. Does not remember of Gardner charging that Republic Oil Company was a part of the Standard Oil Company.

Denies the conversation which Gardner testifies he had with him.

Says that with the exception of a very small percentage the Kansas City station got all its oils from the refineries of Standard Oil Company of Indiana.

Says he does not remember just what took him to Kansas City when he intervened between Gardner and Teagle, and he thinks the question of his intervention was suggested by himself or Mayer, manager of Standard Oil Company at Kansas City.

Says he thinks they sold some high grade oils in Missouri, but not much—the high grade Pennsylvania oil was not a special feature of the company's business.

Walter C. Teagle Recalled.

(Pages 2649 to 2653, Inclusive.)

Says prices at which oils of Republic Oil Company were sold were fixed at Cleveland and a list of prices would be sent to the managers, including the St. Louis manager—this was a regular printed schedule showing cost F. O. B. at Cleveland and selling prices. This included everything that the company sold, such as all grades of refined oils, lubricating oils, greases, paints, lead, etc. Lubricating oils do not fluctuate much in prices. The fluctuation is in refined oils, naptha products and the lighter oils. The price lists sent to managers fixed a minimun price under which they could not sell without consultation with the Cleveland office.

Says palacine oil sold usually from tank wagons at about two cents a gallon above the price of common oil.

385 *George W. Mayer.*

(Pages 2653 to 2668, Inclusive.)

Says he has been connected with Standard Oil Company for about twenty-eight years.

Commenced with Consolidated Tank Line Company. It was succeeded by Standard Oil Company of Kentucky and it by Standard Oil Company of Indiana.

He was with the Indiana Company at Kansas City from 1896 to 1899. Then he went with same company at Detroit, Michigan, and then back to Kansas City in 1901, as manager of the company. He has been there since. His territory is mostly north of Missouri river. The St. Joseph station has the northern part of Missouri, along the Iowa line, not a great amount.

Says his company has done no rebating at Kansas City territory since he has been there.

There has been no agreement or understanding between him or his company with the Republic Oil Company or Waters-Pierce Oil Company relative to fixing or maintaining prices.

Henry Teagle was manager of the Republic Oil Company for a while—he was succeeded by Cochran.

In 1902 both the Republic Oil Company and National Oil Company were rebating all over Kansas City. It demoralized the trade and his company lost trade.

Teagle and Gardner were always at sword's points, calling each other names and the intention was to get them together and have a talk. Says, "We arranged with them to go to Mr. Crenshaw's room at the Coates House, and we took them up stairs—I think we sent down and got some cigars—and we went out and left both gentlemen there and we went down in the lobby and stayed there probably an hour."

386 Denies the statements made by Gardner that Crenshaw said if he had known those contracts were made by Teagle (of the Republic) he would not have permitted it.

Said he did not take lunch with Gardner and Crenshaw, and did not go up to the hotel with them.

Says he did not hear the statements testified to by Gardner that Crenshaw made.

So far as his territorial lines are concerned, they existed when he went there and have not been changed. Does not know how they came to be established where they are.

Says the gauge rods furnished to Morgan and other salesmen were for the purpose of measuring barrels of competitors. The gauges were correct and not furnished in order to deceive.

Relative to the testimony of Whelan, says that whenever the Republic Oil Company or any other company called up his office and asked for prices they would be given. No distinction was made between the Republic Oil Company and any other company, but says he did not instruct the Republic office to have its tank wagons fall in line.

Says prices for his company were fixed from Chicago—no change could be made without consulting the Chicago office. Does not know who fixed prices for Republic Oil Company.

During the years 1902, 1903, 1904 and 1905, the Standard Oil Company done from seventy-five to eighty per cent of the business at Kansas City.

As a result of the conference between Crenshaw, Teagle, Gardner and himself, the rate war of 1902, stopped within sixty days after.

During the rate war referred to it was exclusively between the Republic and National—they were the companies giving rebates. Standard Oil Company did not engage in it.

387 *Haggert S. Cochrane.*

(Pages 2678 to 2697, Inclusive.)

He is cashier for Republic Oil Company at Kansas City, and has held that position since January, 1903. Prior to that he was with the company at Cleveland, Ohio, as sales manager—was in that position for about a year. Prior to that he had been manager for Republic for a short time at Kansas City. He had been manager for Schofield, Shurmer & Teagle at Kansas City from 1892 to the time they sold out.

The first he knew of the sale he saw in the newspaper where Schofield, Shurmer & Teagle had sold out to the Republic Oil Company.

Schofield, Shurmer & Teagle were competitors of Standard Oil Company at Kansas City. They got their oil from various points—Cleveland; they had a refinery there. Most of their oil came from there in Great Western oil cars.

Information came to him from the office of Schofield, Shurmer & Teagle at Cleveland that the firm, the Cleveland Refinery and Scio Refinery, had been consolidated under the name of Republic Oil Company, or had been sold to a New York corporation known as Republic Oil Company.

Says Republic Oil Company gets its oils from Pennsylvania, Ohio, Missouri and Indiana. About seventy-five per cent of their oil comes from Pennsylvania companies.

Says they never got a shipment of oil in Union Tank Line cars—the shipments came in other cars.

Also got some cheap oils from Sugar Creek Refinery which came from A. Bogardus, agent.

Says he never bought any oil—it was all bought at Cleveland and shipped to them.

388 Says he knows nothing about Bogardus as to who or what he is. He did not pay any for oil—it was paid for at Cleveland.

They did not get a bill of the oil at Kansas City—simply got an invoice showing what the gallonage was.

The refinery at Sugar Creek is a Standard Oil refinery.

Shipments of oil from Bogardus come in Republic Oil Company cars.

The oil that came from Whiting was consigned to them by Andrus.

W. T. McKee is secretary, W. E. Judd, general manager, and C. L. Nichols is president of Republic Oil Company.

Nichols is at 75 New street—does not know that to be an entrance to 26 Broadway. Made his reports to the Cleveland office.

Says a man by the name of Tinsley came out to Kansas City to check up the property of Schofield, Shurmer & Teagle when they sold. Also a man by name of Stein came with Tinsley to assist him. Says he does not know where they came from. They had letters of introduction from W. C. Teagle. Neither Tinsley or Stein had been connected with Schofield, Shurmer & Teagle to his knowledge.

J. H. Hart is the only auditor that ever checked up the business of Republic Oil Company since he has been with it at Kansas City.

Tinsley and Stein were working for a New York corporation as auditors.

He says it was reported in the newspapers at the time that Schofield, Shurmer & Teagle had sold out to the Standard Oil Company.

The refinery of Schofield, Shurmer & Teagle at Cleveland, which had been their principal source of oil, was dismantled soon after they sold out.

389 Says the territory of Republic Oil Company at Kansas City is in Kansas, western Missouri and any place where shipments can be made consistent with freight rates. His company does not sell in Waters-Pierce territory.

Says he represents the Republic as an independent competing company of the Standard Oil Company, and has always claimed such to the public.

Finds people who are prejudiced against Standard Oil Company, and to them he claims his company is independent of the Standard.

Says there was some changes by the Republic when it begun business in forms and methods of doing business, but whether they followed the Standard or not he does not know.

Says he got his prices for selling oil from Cleveland, and did not get them from the Standard Oil Company at Kansas City.

Competition between Standard Oil Company and Schofield, Shurmer & Teagle always existed—that firm was very aggressive as a competitor. Each was trying to get the business of the other.

C. D. Webster.

(Pages 2703 to 2729, Inclusive.)

Lives at Humboldt, Kansas, and is in the business of refining oil. Has been in the oil business twenty-eight years and nearly all the time as a refiner. He has had refineries in Pennsylvania and Ohio. He began his works at Humboldt in 1903.

Says he is familiar with the costs and expenses incident to the refining of petroleum.

Oil was discovered in Kansas back in about 1889, but the production did not amount to much until within the past five years. In 1905 there was something like twelve million barrels produced in the state.

390 The total production of petroleum in the United States in 1900 was sixty-three million barrels, worth about seventy-five million dollars. In 1905 the production was one hundred and thirty-four million barrels, worth about eighty-four million dollars. The principal increase in the production came from Texas, Kansas and the Territories. During that period the productions in Pennsylvania, Ohio and Virginia remained about stationary. The decrease of value has been in the Kansas, Texas and Territories fields—the price in the East has remained about the same.

For the last twenty years the price of crude petroleum in the eastern fields has not varied much.

In 1903 the crude was worth $1.16 a barrel, afterwards it brought thirty-two cents to fifty-two cents, according to the gravity—that is a barrel. This was after it was put on the gravity basis by the Standard Oil Company, it being the only purchaser in the field. Now the best brings 39 cents—from 26 to 39 cents a barrel.

There has been a marked decline in refined oil in Kansas—in 1904 it was selling to the grocers at fourteen and a half cents, and now it is selling at seven and a half cents. He thinks the cause of this was to injure the independent refiners. There has been very little change in refined oil in other parts of the country within the last four or five years, except where there has been competition.

While the output in the United States has nearly doubled since 1900 the price of refined oils have changed very little except in Kansas.

There is a law in Kansas providing that if oil is lowered in one place it must be lowered in other places.

The entire expense to him for refining a barrel of petroleum, including cost of oil, piping, etc., is about sixty-six and a quarter cents, or about a cent and a half a crude gallon. Says he
391 would get about twelve gallons of refined oil besides the gasoline, gas oil, asphaltum and coke as by-products.

There are about fourteen independent refineries in the Kan field—they are small, average about 200 barrels a day of crude troleum.

Says he sells oil at his refinery at five cents a gallon—wholes price, and makes a good profit. Sells it in St. Louis at six cent gallon—costs about a cent a gallon to get it there.

Says the Kansas crude is better than that of Indiana and Oh but not as good as some of the productions of Pennsylvania.

The actual cost of refining at his refinery at Humboldt, Kans not including cost of oil and transporting, is sixteen and a quar cents a barrel.

Says he never refined any Texas or Indiana oils, nor Ohio o except around Marietta.

Says he sells in tank wagons in Kansas at eight cents a gall This is because of the additional expense of maintaining wago horses, men, and selling in small quantities.

Says he has between sixty and seventy thousand dollars inves in his refinery. He has no oil wells.

Says that in the Kansas and Indian Territory fields the prod tion of crude oil has increased from about 1,000 barrels in 1889 12,000,000 barrels in 1905.

The sales he makes at St. Louis and Joplin are made to the jobb and not to the trade.

He sells by tank wagon delivery in Kansas at eight cents and Standard sells at seven and a half cents, but says the Standard is inferior to his. Says the Standard sells higher grades there, which they charge three or four cents more.

The oil he sells at eight cents is one hundred and fifty fire water white oil and that is the grade of oil he gave the expense refining.

392 (Page 2730.)

Government statistics showing production of petroleum in Pen N. Y., and Ohio, West Vir., Ind., Kan., Tex., Mo., and Ind. Te tory for years 1900, 1901, 1902, 1903, 1904 and 1905.

A. H. Gardner, Recalled.

(Pages 2742 to 2767, Inclusive.)

Connected with National Oil Company at Kansas City. Says company makes a difference between tank wagon sales and sales barrels of from 3½ to 4 cents a gallon—that is, the barrel oil is t much higher. That much is charged for the package and expe of putting it into a package. These are wooden barrels.

In 1903 says his company was making about 3½ cents per gal on high grade oils and about ½ cent on common or water wh oils.

Says his company has never tried to buy oil from any of respondents, nor has any of them offered to sell to his compa His oils are obtained from independent refineries.

His company sells the oils of the National Refining Company. They are assigned certain territory and don't sell in other territory where the same oils are sold by other companies.

(Page 2763.)

Tabulated statements showing the prices at which the National Oil Company sold its various brands of oil and gasoline at Kansas City, Mo., during each month of the years 1903, 1904, 1905 and 1906. This statement was prepared from the records of the company at Kansas City and furnished and identified by witness Gardner.

393 *A. L. Stocke.*

(Pages 2767 to 2775, Inclusive.)

Says the prices of St. Louis Oil Company in St. Louis have been regulated by the prices fixed by Waters-Pierce Oil Company. The prices of Waters-Pierce Oil Company were followed.

The tabulated statement referred to below was made from the records of the St. Louis Oil Company showing prices for last ten years at which that company has sold in St. Louis, being prices which followed the market price fixed at various times by Waters-Pierce Oil Company. This table gives only the price of water white or prime white oil, which is the common oil or coal oil, sold by tank wagon delivery in St. Louis. The price of this same oil in barrels would be about three cents a gallon more to cover cost of barrel and barreling. There is more of this grade of oil sold than any other.

This water white of St. Louis Oil Company corresponds to what the Waters-Pierce Oil Company calls 150 coal oil. Their grade of cupion is a high grade oil.

The tabulated statement submitted by witness merely represents the price at which the St. Louis Oil Company sold water white oil in St. Louis from tank wagons from 1896 to 1906.

(Page 2772.)

Tabulated statement above referred to showing average prices per month and by the year, for the years 1896 to 1906 inclusive, at which the St. Louis Oil Company sold water white oil from tank wagons in St. Louis.

Stocke says that about seventy-five per cent of the tank wagon sales of oil in St. Louis by St. Louis Oil Company consists of the common grade of oil, water white.

394 *A. H. Gardner.*

(Pages 2776 to 2777, Inclusive.)

Says his company at Kansas City, National Oil Company, has for the last seven years, followed the prices fixed there by Standard Oil Company. Had to do so because it was to the interest of his com-

pany to do so and because they could not compete in the way of cut-ting prices. The Standard was too large for them. During the last six or seven years the Standard Oil Company and Republic Oil Company have sold from eighty to ninety per cent of the oil in Kansas City.

A. L. Stocke.

(Pages 2777 to 2779, Inclusive.)

States that during the last ten years the price of oil in the City of St. Louis has been about normal with a tendency upward—there has not been a gradual decline. Gives this as an opinion based on the records of the St. Louis Oil Company.

(Page 2779.)

Articles of incorporation of Standard Oil Company of New Jersey. Dated August 1, 1882. Capital stock, $3,000,000. Nine trustees of Standard Oil Trust are named as holding 29,996 shares of the thirty thousand shares.

On June 14, 1899, the charter of the Standard Oil Company of New Jersey was amended by increasing its capital stock to $110,000,000, and among other new powers given by the amended charter it is given the further power "to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to
395 exercise all the privileges of ownership, including voting upon the stocks so held; to carry on its business and have offices and agencies therefor in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey."

(Page 2790.)

Report of Standard Oil Company of New Jersey for year 1901 to State of New Jersey, showing names of directors and officers.

396 *Rulings Upon Objections to Testimony.*

(References are to Pages of "Printed Record of the Testimony."

On pages 307 and 312 the witness Hatfield was asked to state in general way with reference to the similarity of the division of trade territory on the map that he saw at 26 Broadway and the one he afterwards saw at the Waters-Pierce Oil Company office in St. Louis. An objection to this question was sustained. It should have been overruled and the witness permitted to state if the two maps disclosed a similar division line of territory.

On page 1071 a ruling on the objection to the introduction of a certified copy of the charter of the Consolidated Tank Line Company was reserved by the Commissioner. The objection is now overruled.

The objection to the testimony given by witness Wheelan in answer to the second question on page 595 should have been sustained in so far as it attempted to elicit the relations between the Republic Oil Company and Standard Oil Company, but the testimony was competent to the extent that it showed knowledge on the part of Cochran of such relations.

On page 1075 a ruling on the objection to the introduction of a certified copy of the charter of the Standard Oil Company of Kentucky was reserved by the Commissioner. The objection is now overruled.

The objection to the tabulated statement set out on page 2730 should have been sustained. It was not properly shown to have been correct and authoritative. The same information is given in a proper way by the witness Webster.

The objection to the compilation of prices of the National Oil Company set out on pages 2763 to 2765 should have been sustained.

397 The objection to the compilation of prices of St. Louis Oil Company set out on pages 2772 to 2773 should have been sustained.

All proper exceptions to the foregoing rulings by the Commissioner are now allowed.

398 *Findings of Ultimate Facts.*

(The References in Parentheses are to Top Pages of the "Printed Record of the Testimony," Unless Otherwise Noted.)

Under this head the Commissioner has endeavored to collate and marshal the facts in as logical a manner as it was possible. Owing to the great diversity and wide range of the evidence, that the charge is virtually a conspiracy, and that very little direct testimony has been produced bearing on the issues, the Commissioner has been compelled to put together and consider all the many items and circumstances in evidence in order to arrive at a conclusion as to whether the respondents are guilty of entering into the combination or conspiracy charged.

A brief history of the organization and development of the respondents will first be given separately, and afterwards the conduct of their business and relations towards each other, in so far as the conduct of each has a bearing on the charge of a combination existing between them for the purposes set out in the information, will be considered under appropriate headings.

Many things will be stated, as facts without a citation to the record of the testimony, because such facts are now conceded by counsel for all the respondents. In fact, there is now but little variance between counsel as to the facts proven; the real contention is as to the inferences to be drawn from the facts. Counsel for informant maintaining that the facts show the respondents guilty of entering into a combination, agreement, conspiracy, etc., to fix, maintain and control the sale and prices of the products of petro-

leum in the State of Missouri, while counsel for respondents maintain that such conclusions are not warranted by the evidence.
399 This, upon the facts, the court will find to be the main contention between informant and respondents. Upon the questions of law the contentions will take a broader field. And first of the

Waters-Pierce Oil Company.

The Waters-Pierce Oil Company is a corporation organized and existing at all times, under the laws of the State of Missouri. It has always maintained its principal office in the City of St. Louis, Missouri. It was first incorporated on May 7, 1878 (417), with a capital stock of one hundred thousand dollars. In the year 1882 its capital stock was increased to four hundred thousand dollars by a proper statutory proceeding (419). On May 28, 1900, the Waters-Pierce Oil Company was dissolved by filing with the Secretary of State the statutory affidavit (2391), and on May 29, 1900, the Waters-Pierce Oil Company was incorporated with a capital stock of four hundred thousand dollars (1068).

Prior to 1878, W. H. Cobb & Co., a partnership, was in the oil business at St. Louis, Missouri. This firm was succeeded by H. C. Pierce & Co., which, in turn, was succeeded by Waters-Pierce & Co. (1894). When the Waters-Pierce Oil Company was organized in 1878, the firm of Waters-Pierce & Co. subscribed to forty per cent, Horace A. Hutchins and William P. Thompson of Cleveland, Ohio, to forty per cent, and Chess, Carley & Co. of Kentucky, to twenty per cent of the capital stock of said company (1887). Some time after the organization of the first Waters-Pierce Oil Company, the stock owned by Hutchins, Thompson and Chess, Carley & Co., amounting to sixty per cent of the whole capital stock, was placed in the hands of the Standard Oil Trust, which was organized about that time (1887). The stock holding stood thus until 1890, when the Standard Oil Company of New Jersey acquired 2,750 shares of the
400 four thousand shares of Waters-Pierce Oil Company, and H. C. Pierce owned 1,250 of said shares, which relative ownership continued unchanged up to 1900, when the old Waters-Pierce Oil Company was dissolved (1924-1925). These shares from 1890 to 1900 were not held directly by the Standard Oil Company of New Jersey, but generally by individuals connected with Standard Oil interests for that company.

There is no question but that the cause of the dissolution and liquidation of the first Water-Pierce Oil Company was caused by litigation and prosecutions in the State of Texas, growing out of the supposed control of that company by Standard Oil interests (1888, 1443, 1889). As Mr. Pierce states, after a consultation with the executive committee of Standard Oil Company of New Jersey, the plan of disorganizing and reorganizing was agreed on for the purpose of enabling the Waters-Pierce Oil Company to continue business in Texas.

The new company under the same name and practically the same

officers and employés, took over all the assets, consisting of equipments, oils, moneys, tank stations, wagons, factories, refineries, etc., of the old company, and conducted the business exactly as it had been conducted before without any intermission (77, 234 et seq. 241, 243, 250, 378, 379, 831, 832, 687, 1808, 1908, 2175, 2393). An examination of the minutes of the meetings of the stockholders and board of directors from 1900 to 1905 (Exhibit "R3," not set out in the record) show that the new company issued to the old company its notes for the purchase price, which notes were assigned to individuals whose identity *are* not disclosed by the evidence, and afterwards paid out of the earnings of the company. While all the stock of the new company, four thousand shares, stood on the books of the company in the name of H. C. Pierce except four shares, yet, as a matter of fact, the Standard Oil Company of New
401 Jersey continued to own and control 2750 shares, H. C. Pierce 1250 shares, which proportion of ownership continued from May 29, 1900, to the institution of this action (1925). These facts are no longer disputed.

While H. C. Pierce testifies that he, by agreement at the organization of the Waters-Pierce Oil Company in 1878, and with various persons representing Standard Oil interests following that date, was to, and did, have absolute control and management of the company (1926, 2309, 1929, 1888), yet the evidence shows that from the time of the organization of the company in 1878 to 1900, persons representing Standard Oil interests, and holding stock either as a member of the trustees of the Standard Oil Trust or for the Standard Oil Company of New Jersey, were members of the Board of Directors of the Waters-Pierce Oil Company, and took part in its management (1895, 1896, 1458).

The first Waters-Pierce Oil Company of 1878 was organized as provided by its charter for "dealing in naval stores and dealing in and compounding petroleum and other oils and all the products thereof, and buying and selling the same, in the State of Missouri and other States."

The Waters-Pierce Oil Company of May 29, 1900, was organized, as provided in its articles of incorporation, for the purpose of "dealing in naval stores, and dealing in and compounding petroleum and other oils, and all the products thereof, and buying and selling the same in the State of Missouri and elsewhere."

The company proceeded almost immediately to establish a large business in a part of Missouri, in Arkansas, Texas, Louisiana, Indian Territory, Oklahoma and the Republic of Mexico. In the United States its business was confined to marketing the products of petroleum, while in Mexico it both refined and marketed the products of its refineries. Its oils, especially from 1900 to the
402 present, which it sold in the United States, were obtained almost wholly from the Standard Oil Company of New Jersey or its allied interests. Its crude petroleum, which it refined and sold in the Republic of Mexico, was also obtained from Standard Oil interests (1469, 1470, 1471, 1892, 1893, 1898, 1891-3, 1905, 1994-5).

The company has, in the way of equipments, tank stations, from which oil of all kinds reach customers by tank wagon delivery. These tank stations are erected and maintained at all important points where the population and amount of business will justify; that is, within the territory in which the company does business. Besides a great amount of oil is delivered or shipped to customers in wood and iron barrels. The witnesses all agree that the company handling its oil through tank station and wagon deliveries has quite an advantage over the dealer who is not similarly equipped. Mr. Wilhoit, an independent dealer in oils at Springfield and Joplin, a fair and very intelligent gentlemen, says about tank station competition: "It is hard competition. This tank competition is something hard to overcome" (879). He further points out that the company using tank stations can get from three to five cents more for oil per gallon than the company which ships in barrels. This is partly due to the fact that barrel shipments are local and more expensive, while the tank station is supplied by tank car shipments at commodity rates (879, 901). Every town and trade center in the territory of the Waters-Pierce Oil Company is reached by it either by means of tank stations and wagon, can or barrel deliveries, or by shipments from some station in wood or iron barrels. In the City of St. Louis, the company runs from twenty-five to thirty wagons, and in other towns and cities of the State where wagons are maintained a smaller
403 number. On the question of equipments and manner of delivery and sale of oil, see (79, 91, 147 et seq., 165, 534 et seq. 715, 1898 et seq. 1906, 2007, 2000, 2029, 2132 to 2136, 2409 et seq.).

The construction placed on the articles of incorporation of the Waters-Pierce Oil Company, by both counsel for informant and respondents, is that it had the power to produce and refine petroleum as well as to deal in and market its products.

Some twelve or fifteen years ago the company bought out the firm styled the International Oil Works, a company selling the products of petroleum in the City of St. Louis by tank wagon deliveries. One Grenner was retained as the manager of that firm, who received a salary from Waters-Pierce Oil Company. Grenner got his oils from Waters-Pierce Oil Company and reported regularly to the latter company. The evidence shows that the two companies were competitors in the solicitation of trade, but not as to prices (323, 1944).

In the spring of 1904, 2747 shares of stock in the company, assigned in blank by H. C. Pierce shortly after the new incorporation in 1900 and delivered in New York to a representative of the Standard Oil Company of New Jersey, were presented to the secretary of Waters-Pierce Oil Company by one R. P. Tinsley, and were by the secretary assigned on the books of the company to M. M. Van Buren.

H. Clay Pierce, who has been president of the Waters-Pierce Oil Company most of the time from its original organization in 1878, and the principal manager and director of its affairs and policies during all the time of its existence, says that its requirements are

worth five million dollars (1902); tangible assets, twelve million dollars, and assets, equipments and good will combined from forty-five to fifty-five million dollars (1909).

Exhibit "R3," minutes of meetings of boards of directors of
404 Waters-Pierce Oil Company, show that for five years beginning with June, 1900, including amounts paid out to liquidate notes given by the new company to the old company and dividends declared, the company earned on its capital stock an average of 471 per cent per annum. Mr. Pierce places the dividends of the company for the same time at from six to seven hundred per cent per annum (1940).

The only other companies operating tank stations and wagons in Waters-Pierce territory were Republic Oil Company, St. Louis Oil Company and International Oil Works at St. Louis, and E. M. Wilhoit at Joplin and Springfield (2017, 2030, 2029).

The company markets ninety per cent of its oils by tank wagon sales and by iron barrel deliveries, the remainder being sold and delivered in wood barrels (2232).

Republic Oil Company.

This company was organized under the laws of the State of New York, with a capital stock of three hundred and fifty thousand dollars, on the 3d day of June, 1901, and was licensed to do business in the State of Missouri on July 8, 1901 (1059, 1061). It was organized for the express purpose, by officials of the Standard Oil Company of New Jersey at 26 Broadway, New York City, of purchasing and taking over the assets, business, plants, stations, good will, etc., of the old independent firm of Schofield, Shurmer & Teagle, a partnership, located at Cleveland, Ohio, and which had been engaged in the sale of the high grade products of petroleum of Pennsylvania production throughout the central West and Southwestern portions of the United States for many years. The firm of Schofield, Shurmer & Teagle had established a wide reputation as dealers in high grade oils and had established such a wide and growing demand for "palacine,"
405 a high grade illuminating oil, that it was impossible for other companies to successfully put any other brand in competition with it (2533, 2536, 2549, 2414 et seq. 2580).

This company was organized and all the stock subscribed for by three Standard Oil Co. employés. Geo. B. Wilson was chief accountant of the Standard Oil Company of New York; James R. Taylor was a stenographer for W. H. Tilford, a director of the Standard Oil Company of New Jersey, and L. H. Turrell was chief clerk in the office of the Standard Oil Company of Indiana (one of the respondents). Neither of them paid anything for his stock, nor did they retain possession of it or draw any dividends. Turrell took a position with the Republic Oil Company as secretary, but the other two incorporators continued in the position held by them before the organization of the company (2416, 2417).

Besides purchasing the assets, good will, etc., of Schofield, Shur-

mer and Teagle, at the same time the same parties purchased a refinery located at Cleveland, Ohio, and one located at Scio, Ohio. Members of the Schofield firm were interested in these refineries and had marketed their products. Shortly after the purchase both refineries were dismantled (2477, 933, 975, 2482).

This company sold oils principally in the same territory in which the Standard Oil Company of Indiana sold, and in addition had a station at St. Louis in Waters-Pierce Oil Company territory. It sold in St. Louis by tank wagon deliveries and had two barrel stations or warehouses in Southwest Missouri, and sold some oil in Waters-Pierce territory from Kansas City, Sedalia and Clinton. The tank station at Springfield, sold to Republic Oil Company by Schofield, Shurmer & Teagle, was removed in the fall of 1901 (103, 876, 440), yet it was shown that this was a good paying station (880).

The business of the company, so far as concerned managers and field agents, was transacted from Cleveland, Ohio, where the gen-
406 eral manager was located. The home office was located at 75 New Street, New York City, which was one entrance to 26 Broadway, the home and central headquarters of Standard Oil interests (1150). It is admitted that all the stock of Republic Oil Company is now held, and has been since its incorporation, for the Standard Oil Company of New Jersey (1157). In other words, the Standard Oil Company of New Jersey, is now and has at all times been, since the inception of the company, the sole owner of all its stock. The admission referred to is not quite as broad as the above, but the evidence shows the statement to be absolutely true.

In the fall of 1901, C. L. Nichols became president of the company. He was at the time a clerk or assistant to Walter Jennings, a leading Standard Oil official at 26 Broadway, New York, and sales agent of the Standard Oil Company of New York. He continued to occupy that office as assistant to L. J. Drake, sales agent of Standard Oil Company of Indiana, received reports from Republic Oil Company addressed to him at 75 New Street, and received a part of his salary from the latter company and part from Standard Oil Company (1189, 1190, 2530, 2537, 2545).

Since the disclosures made in this case of the ownership of the Republic Oil Company by the Standard Oil Company of New Jersey, the Standard Oil Company of Indiana, has purchased the plants, assets, stations, etc. of the former located at all places except in the State of Missouri. The president, Mr. Nichols, says that this was necessary because the Republic Company had served its purpose—it had kept and maintained the "palacine" brand of oil. The Standard Oil Company of Indiana is now selling that famous brand except in Missouri, where the Republic has been prevented from going out of business and selling to the Standard by the action of the State authorities (2549, 2553).

407 Sales by this company in the beginning of "palacine," the high grade Pennsylvania oil, amounted to from twenty-five to thirty-five per cent of total sales, which was gradually increased to from fifty to sixty per cent of its total sales (2553, 2581.)

Standard Oil Company of Indiana.

The respondent in this case, Standard Oil Company, is a corporation existing under the laws of the State of Indiana. It was organized on June 11, 1889, with a capital stock of five hundred thousand dollars. It was organized as set out in its charter to "Manufacture the products of crude petroleum, to transport and sell the same, to manufacture barrels and packages for containing said products, to erect necessary buildings and manufacture the necessary machinery and to do all business found to be necessary or convenient in carrying on the business specified." On January 21, 1897, this company was licensed to do business in the State of Missouri (1065, 1068.)

It was admitted that the Standard Oil Company of New Jersey, owned a majority of the stock of this company since 1901 up to the present time. The evidence shows that from its inception the New Jersey Company owned practically all its stock, or that such stock was held for the New Jersey Company by individuals connected with Standard Oil interests (1724, 2436.)

Prior to 1892, the Consolidated Tank Line Company, an Ohio corporation, and a Standard Oil interest was engaged in marketing oil in Missouri. It was succeeded in Missouri by Standard Oil Company of Kentucky, another Standard interest, which in turn was succeeded in this State by the Standard Oil Company of Indiana, one of the Respondents. The latter company and its predecessors in Missouri sold oil only in a certain part of the State which question will be dealt with fully when the matter of territorial division is taken up (2402.)

408

When the Respondent Standard Oil Company was first organized, it began as a refiner and constructed a large refinery at Whiting, Indiana. It was not until some time afterwards that it also became a distributor, that is a merchant by means of tank wagons, stations etc., (2402.) The Whiting refinery when first erected supplied Standard Oil interests with oil for distribution throughout the West and Southwest, until petroleum was discovered in Kansas (2402.) Then a refinery was built at Neodesha by Standard Oil interests and later on a larger one was built at Sugar Creek, near Kansas City (2403.) At this time and for some time past the Whiting refinery has obtained its crude — from the oil fields in Kansas, the Territories and Illinois. When the Company was licensed to do business in Missouri in 1897 it then became a distributor in this Sta-e and now has and maintains some fifty-nine stations from which oil is distributed in various ways (2614).

The equipments, tank stations, wagons, etc., used by this company were in every way similar to those in use in the territory of the Waters-Pierce Oil Company. In the territory in which it sold they were the largest and most extensive of any other company (2409 et seq.).

Not only did this company manufacture the various products of petroleum and sell them, both at wholesale to Standard Oil interests,

and as a distributor, but it owned and operated oil wells and purchased large quantities of crude petroleum. The Standard Oil interests of the United States, according to John D. Archbold, produce one-ninth of the total production in the United States, but refine and sell of the total production seventy-five per cent. He
409 claims that the independent refineries of this country are able to supply the demand, and on the other hand that Standard Oil interests are also able to refine and supply the total demand. This view, however, is not held by other witnesses, notably, H. Clay Pierce, of Waters-Pierce Oil Company (1739).

The officers and directors of this company have always been men connected with 26 Broadway, New York City, where the principal office of the company has been maintained (1722).

The business carried on by Consolidated Tank Line Company at Kansas City was taken over and succeeded to by Standard Oil Company of Kentucky, and the same business, system, property, employés, brands of oil, etc., without any apparent change except in the name was taken over by respondent Standard Oil Company (429 to 430). The firm of Chess Carley & Co. was succeeded by the Standard Oil Company of Kentucky. Horace A. Hutchins and W. P. Thompson were connected with the latter company, and also at 26 Broadway. L. J. Drake was also a leading officer in both the Standard of Kentucky and of Indiana and was also connected with Standard interests at 26 Broadway. Alex. McDonald, one of the original Standard Oil men was also connected with all these interests (658, 659, 660).

Standard Oil Company of New Jersey.

This company was organized on August 1, 1882, under the laws of New Jersey, with a capital stock of three million dollars. As set out in its charter its objects were the *laws of New Jersey with a capital stock of three million dollars. As set out in its charter i-s objects were the* "Refining of petroleum, the manufacturing of the various products thereof; the purchasing of the crude material and the sale of the manufactured products thereof, the manufacture of
410 barrels, boxes, cans, and other packages, in which the manufactured products may be kept or transported; the manufacture and restoration of acids, and whatever other substances may be used in the manufacture of the products of petroleum." (2779.) In June, 1889, the charter referred to was amended by increasing the authorized capital stock to one hundred and ten million dollars. By the amended Articles the objects and powers of the company were increased and extended as indicated by the following language quoted from the amended charter, to-wit: "To do all kinds of mining, manufacturing and trading business; transporting goods and merchandise by land or water in any manner; to buy, sell, lease and improve lands; build houses, structures, vessels, cars, wharves, docks and piers; to lay and operate pipe lines; to erect and operate telegraph and telephone lines for conducting electricity; to enter into and carry out contracts of every kind pertaining to its business; to

acquire, use, sell and grant licenses and patent rights; to purchase or otherwise acquire, hold, sell, assign and transfer shares of capital stock and bonds or other evidences of indebtedness of corporations, and to exercise all the privileges of ownership including voting upon the stocks so held; to carry on its business and have officers and agencies thereof in all parts of the world, and to hold, purchase, mortgage and convey real estate and personal property outside the State of New Jersey." The corporation was further empowered to have its principal offices outside the State of New Jersey (2782).

A brief outline of the formation and history of the respective Respondents having been given, together with a sketch of the Standard Oil Company of New Jersey, the parent, owner and controlling spirit of all respondents, there will now be separate findings of facts under heads bearing more immediately upon the charges contained in the information, and first of

411 *Grades and Brands of Oil.*

All the companies selling the products of petroleum in Missouri have different brands, that is, different names for the same grade of oil. All sell what they term high grade and common oils, both illuminating and lubricating. The Waters-Pierce Oil Company sells "Eupion" as its high grade and water white as common or coal oil. All witnesses agree that much more of illuminating is sold by the respondents and such companies as the National Oil Company at Kansas City and St. Louis Oil Company at St. Louis, than there is of lubricating (53, 838, 54.) Of the total sales of oil in the State, the sales of illuminating and gasoline amount to from sixty-five to seventy per cent, and lubricating from thirty to thirty-five per cent, while there is much more competition in the sale of lubricating because these oils are sold usually directly to the consumer and there are numerous companies dealing specially in such oils. (135, 168, 2454.)

Standard Oil Company Did Not Sell to Independents.

Throughout this case all companies, individuals or corporations, selling the products of petroleum in Missouri, except the Respondents and the International Oil Works, have been designated Independents. Such dealers as Wilhoit, of Springfield and Joplin, National Oil Co. of Kansas City and St. Louis Oil Company of St. Louis, are the principal independent dealers in illuminating and gasoline oils. There are many other companies in the state selling lubricating oils in the sale of which there is competition among nearly all companies, but the sales of these oils are
412 not considered of very much importance in this case as they embrace only a small portion of the dealing in the products of petroleum. Moreover, the evidence shows that the respondents handled lubricating oils more as an incident to their business of selling the refined products of petroleum. The evidence develops the peculiar condition of the Standard Oil Company of Indiana and

Waters-Pierce Oil Company buying practically all the products handled by them from the Standard Oil Company or its allied interests, and at the same time the independents buy all their goods from independent refineries. There is considerable evidence going to show that at times independent dealers tried to buy from Standard Oil interests, but could not do so. Stocke, of the St. Louis Oil Company back in 1893, says he tried to buy of the Standard at East St. Louis, but its agent refused to sell him (59, 56, 84, 62, 146, 324, 381, 460.) G. J. Steigerwald, who was formerly with the firm of Schofield, Shurmer & Teagle and afterwards purchasing agent for the Republic Oil Company with headquarters at Cleveland, Ohio, but who is now with F. G. Clark & Co., wholesale dealers in the products of petroleum at Cleveland, Ohio, says that he sells for his house in many states and makes sales exclusively to independent jobbers (1000). The Republic Oil Company in Missouri got its oils chiefly from Standard Oil Refineries, but it purchased some high grade refined oils from independent refineries (946.) In the early days of the Republic Company, following a period immediately after taking over the property, business and brands and trade marks of Schofield, Shurmer & Teagle, it got a considerable portion of its oils from independent refineries in Pennsylvania. The Standard Oil interests were unable to furnish a brand of oil to equal the "palacine" of Schofield, Shurmer & Teagle (2483, 2535, 2587.) Mr. Moffett, president of the Respondent,
413 Standard Oil Company, enumerates the Standard interests to which this respondent sold and then added that its sales were generally — companies allied with those interests (2423, 2440 et seq.)

Territorial Division in Missouri.

On this proposition there is only one fact now at issue. It is conceded that the respondents, Waters-Pierce Oil Company and Standard Oil Company, did not sell the products of petroleum at the same places in the State of Missouri, and that they never have done so. Yet it is contended that this condition was not brought about by any agreement between these respondents, nor does it exist by virtue of any combination or understanding to control the trade or limit competition in the products of petroleum. H. C. Pierce says, that in 1878, upon the organization of the Waters-Pierce Oil Company, this division was made and established by agreement between his company and the Standard Oil Company of Ohio. All witnesses agree that the lines have from that time to this, been respected, and that neither the Waters-Pierce Oil Company, nor the Standard Oil Company of Ohio, Consolidated, Tank Line Company, Standard Oil Company of Kentucky, or Standard Oil Company of Indiana, have ever trespassed beyond its assigned territory, except in some minor instances (1890 et seq.). The witnesses substantially agree upon the following dividing line: Beginning at a point on the Mississippi River on the southern boundary of Lincoln county; thence in a western direction along the southern boundaries of Lincoln, Pike, Ralls, Monroe and Randolph counties;

thence in a southwest direction along the eastern boundaries of Howard, Cooper, Pettis, Benton, St. Clair and Barton counties, and thence west along the southern boundary of Barton
414 county to the Kansas line (Ex. "A".) That part of the state lying north and west of this line constitutes Standard territory, and that part of the state lying south and east of the line constitutes Waters-Pierce territory. Mr. Pierce says his company has never done business in Standard territory, or beyond the line in Missouri, as above indicated, because the company did not desire to extend its business and because of the original agreement to divide the state for trade purposes. (1913 et seq.) All witnesses agree that the Standard Oil Company would not sell or ship oil into Waters-Pierce territory, nor would the Waters-Pierce Oil Company sell or ship oil into the territory of the Standard. Their salesmen and agents were informed as to the line of division and instructed not to go beyond it to solicit business. Orders for oil to one company from a person residing in the territory of the other were transferred and filled by the company in charge of the territory where the customer resided (2405, 2438, 2406, 2078, 2077, 1393, 1012, 835, 763). When agents of either company passed over the line and made sales beyond the territorial line of his company, an accounting had to be made to the company in whose territory the sale was made, and that company reaped the profits (549, 550, 554). A map showing the dividing line in Missouri was kept at 26 Broadway, New York City. It was the same kind of a map which was kept in the office of Waters-Pierce Oil Company in St. Louis (306 to 313).

Prices of Oil, How Fixed.

Prices of the products of petroleum, especially refined oils, illuminating and gasoline, were fixed in Waters-Pierce Oil Company territory by that company. In the City of St. Louis, that company, for the last ten years sent out to the trade and customers card
415 quotations, giving tank, wagon and barrel prices. As a general rule these prices were followed by all other companies, including Republic Oil Company, International Oil Works, as well as independent dealers and companies (66, 67, 92, 290 et seq., 125, 2243, 2776, 2591, 2592, 2595). These prices would be cut and rebates would be given, but both the respondents and the independents claim that the other done the first cutting of prices. Prices of the Waters-Pierce Oil Company varied at different points due to freight rates and the existence or non-existence of competition (125, 126.)

Waters-Pierce Oil Company prices were fixed by the officers of the company in St. Louis. Agents throughout its territory were furnished schedules of prices or special prices in cases of competition (836.)

Wilhoit of Springfield, who does an independent oil business at Springfield and Joplin says that Standard Oil prices in Kansas are now lower than Waters-Pierce prices in Missouri, due to the recent action of the legislature of Kansas, and at the same time the Kansas

merchant can not go over the Missouri line and buy oil from Wate
Pierce Oil Company, nor can the Missouri merchant drive a f
miles over into Kansas and buy oil at cheaper prices from Standa
Oil Company, although the oils are of the same grade. Before t
action of the Kansas legislature, the Standard sold at higher pri
in Kansas than the Waters-Pierce in Missouri (871-2.) Mr. W
hoit who was in the service of the Standard Oil Company for ma
years says that his experience is, in the independent business, th
the Standard or Waters-Pierce base their prices on their nearest co
petitor. The further away they are from competition the high
prices are or the nearer they approach regular prices. His prices
fixed regardless of Waters-Pierce but he does not cut prices becau
he would be forced soon by low prices to quit business.
416 the territory in which he sells in competition with b
Waters-Pierce Oil Company and Standard Oil Company (
doing business in the territory of both) the respondents do
maintain their regular prices but sell lower than at other poi
where he does not sell and where there is no other competition.
further experience has demonstrated that the independent dealer
competition with the Standard or Waters-Pierce, will be permit
to sell up to a certain point without being seriously molested,
if the independent attempts to increase his business over ten per c
of the whole then prices will be so lowered that he will be glad
drop back or quit business. Wilhoit has at several times suspen
business altogether awaiting the readjustment of prices (873, 8
900 et seq.)

H. C. Pierce says the production of crude petroleum is the c
trolling element in fixing the price of its products (—— et se
It is conceded that beginning with and prior to 1901, many new
wells were discovered in Kansas, Indian Territory, Oklahoma, Te
Illinois and other points, yet the fact is as shown by the evide
that the price of the products of petroleum has tended upward d
ing the past ten years (2140, 2778.)

The Republic Oil Company followed the prices of Waters-Pi
Oil Company in its territory. Its managers were instructed to
low those prices, therefore the only reasonable inference to d
from all the testimony on this question is that the Waters-Pi
Oil Company dictated its prices and that it was understood tha
should do so (2591, 2592-3,2595.) There was no authority in
Louis for making prices for the Republic except the Waters-Pi
market (2604, 1097.)

For the Missouri division of the Waters-Pierce Oil Compa
which was separate from the St. Louis division, the gen
417 manager furnished prices as often as it was necessary,
monthly schedules of prices at all points were kept.
manager of the Missouri division furnished prices to tank sta
agents and salesmen (2177, 2180, 2181.) It is claimed by offi
of this company who testified that their better facilities for hand
and delivering oils enabled the company to get and maintain hig
prices than the independents (2186, 2038.)

When Andrew M. Finlay was vice president of Waters-Pierce

Company, Maywood Maxon says Finlay told him he (Finlay) fixed prices at which Republic Oil Company sold oils (192.) While Mr. Finlay and other officers of the Waters-Pierce deny this statement was made, yet, notwithstanding the fact that the statement may not have been made, the evidence taken as a whole demonstrates that the facts embodied in the statement were true.

As to the Respondent, Standard Oil Company, the conditions as to fixing prices in its territory were almost exactly the same as those in Waters-Pierce territory, except that in Standard territory it occupied the commanding position and fixed and maintained prices for itself and all other oil dealers. There was no competition or cutting of prices between Republic Oil Company and Standard at Kansas City or any other point where the Republic operated in Standard territory (430). In 1902 there was a sharp rate fight between National Oil Company and Republic and rebates were freely given by both companies, the Standard during the meantime taking no part and maintaining its prices (431-432). The manager of the Standard Oil Company at Kansas City regularly fixed the prices for Republic Oil Company, which were obtained by the manager of the Republic at any time and he was always notified of a decline or increase (589 et seq. 622, 2661, 2662).

418 All witnesses for respondents claim there was no agreement or understanding between any of the respondents to fix or maintain prices and that they were independent and competitive companies.

Reports of Competitive Shipments.

The evidence shows that both the Standard Oil Company and Waters-Pierce Oil Company, resorted to every means available to keep up with the shipments into their respective territories of oils by independent dealers. Reports to the respondents were made by their traveling salesmen, tank station agents and railroad employés. Their agents were then instructed to investigate such shipments, ascertain who were the purchasers, why the oil had not been sold by the respondent in whose territory the shipment had been made and to endeavor to get the trade of the customer from the independent. These practices did not apply to shipment made by the Republic Oil Company. In many instances purchasers of the independent shipment were induced to cancel the order. Rebates and other inducements were offered in such cases. An agent of either respondent who allowed such shipments into his territory was demerited, or a charge was entered up against him which detracted to a certain extent from his efficiency (131, 132, 134, 508, 773, 774, 2056, 2060, 2190, 2222). This system of getting information of such shipments and heading them off or getting them cancelled whenever it was possible, begun at the time when the Consolidated Tank Line Company sold oil in the present territory of the Standard, was followed by the Standard Oil Company of Kentucky and continued without abatement to the time this suit was instituted (470). E. M. Willhoit says that at Springfield he was told by the manager

of the Waters-Pierce Oil Company station, that the Waters-
419 Pierce Oil Company got a tip on all his shipments except those made in car load lots (885, 902). The plainly evident purpose of this system of espionage was to prevent the sale of the products of petroleum by the independent dealer.

Percentage of Business.

There is practically no contradiction of the fact that in the territory of Waters-Pierce Oil Company outside of St. Louis, it and the Republic Oil Company sold from 85 to 90 per cent of refined oils, that is illuminating and gasoline. In the St. Louis division, including the city and surburbs and East St. Louis, the Waters-Pierce Oil Company and International Oil Works (which was owned by the W.-P. O. Co.) sold at least 90 per cent of such refined oils. Of lubricating oils sold by these companies the per cent was not so large —it ran all the way from twenty-five to fifty per cent. In the territory of the Standard Oil Company, it and the Republic Oil Company sold from 90 to 95 per cent of all refined oils sold, and a much smaller proportion of lubricating oils (125, 169, 172, 555, 323, 510, 483), W. N. Davis, a well informed oil man who testified at Kansas City gave the following as reasons for this condition at Kansas City: "In my opinion, one of the reasons is that the facilities of the Standard Oil Company have for controlling the illuminating trade is such that there is very few independents could raise the money to successfully compete against them. In all towns from fifteen hundred inhabitants up, they have got tank stations established and they furnish oil in bulk, while the independents would be forced to ship in barrels. Then they have another advantage in the way of freight rates. I don't mean to say they get rebates, I don't know anything about that; but in shipping in tanks they
420 save about thirty per cent on the rate. In other words, they get three hundred and fifty pounds for fifty gallons shipped in tanks, whereas, in barrels the Joint Western Classification rating is four hundred pounds. You see that is eighty-five pounds, or twenty per cent, against shipping in barrels, that advantage in freight alone. That twenty per cent is very good profit. Then their system of dealing in tank wagons is such that the trade won't want to buy in barrels where they can possibly buy in bulk, and in order to compete with the Standard it would require vast sums of money (483 et seq.)

The reasons that respondents do not sell a larger per cent of lubricating oils is because these oils are usually sold in packages and directly to the consumer, such as mill men, threshing machine men, mining companies, etc. (484).

H. C. Pierce says that in former years the Waters-Pierce Oil Company sold from 95 to 98 per cent of the refined oils sold in its territory, and that from 1900 to the present time it has sold from 80 to 85 per cent of such oils. He claims that this nearly complete monopoly of the business of selling and distributing refined oils is

due to the superior facilities of the company over other companies (1907, 1951).

The facts are as gathered from the whole testimony, that the Standard Oil Company of Indiana and Republic Oil Company together in the territory in which the Standard sold in Missouri, have sold, distributed and controlled, at least ninety per cent of all the illuminating and gasoline oils sold in that territory since the year 1900, and that in the territory of the Waters-Pierce Oil Company in Missouri, that company, the Republic Oil Company and International Oil Works together, have sold, distributed and controlled, at least ninety per cent of all the illuminating and gasoline oils sold in that territory since the year 1900.

421 *Competition Between Respondents and Others*

Concerning the sale of lubricating oils the evidence shows that many companies, individuals and partnerships, both from in and out of the State, were engaged in its sale, and that legitimate and healthy competition exists at most places in the State in that line of business.

As to the sale of refined oils, or the refined products of petroleum, that is, all grades of illuminating and gasoline oils, the conditions are quite different and has been so for many years.

The very fact that the respondents have monopolized ninety per cent of this business in the State indicates clearly that but little competition has existed or could possibly exist between them and other companies.

A line of intelligent witnesses and experienced oil men introduced by the State, say there was no competition between the Waters-Pierce Oil Company and the Republic Oil Company, nor between the Standard Oil Company and Republic (63, 80). However, there was a rivalry at times at least between the agents of the Republic and Waters-Pierce and agents of the Republic and Standard, for the sale of oils, which upon a few occasions was carried to the extent of giving rebates(326, 327, 328). The "rate war" in Kansas City in 1902 was between the Republic Oil Company and National Oil Company. The Standard did not take part in it (431 et seq.)

At Kansas City the Republic Oil Company made particular effort to get the high-class trade and went after the business of the National Oil Company. Its agents were instructed to solicit all business, but to make special efforts to get to the customers of National Oil Company. It gave rebates to the customers of that independent
422 company, but not to the customers of the Standard. There was some competition there between the Republic and Standard in the sale of lubricating oils, but as a matter of fact neither company gave the sale of such oils much attention. This competition did not extend to cutting of prices. A careful examination of all the evidence shown that there was no competition between these two respondents at Kansas City or any other place in Standard territory and that it acted as expressed by some of the witnesses as a "forerunner" of the Standard (625 et seq. 627, 630, 635).

The competition at Kansas City between the Standard and Schofield, Shurmer & Teagle, had been sharp and active. After the Republic succeeded that firm the conditions changed and the fights for trade were then transferred to the Republic and the independents (555). The Republic at that place gave general instructions to its salesmen to make special efforts to get the trade of National Oil Company (592) it being the only independent company of any importance dealing in refined oils. The rebate system of the Republic as against the National Oil Company is testified to by a number of merchants of Kansas City (665, 666, 668, 671). Other merchants were induced to buy from the Republic upon representations made by its agents that it was an independent company.

The Republic Oil Company did business at Springfield, Missouri, for a short time after succeeding Schofield, Shurmer & Teagle. There was no competition between it and Waters-Pierce Oil Company in Southwest Missouri, that being Waters-Pierce territory. In that part of the State, the Republic handled "palacine" and sold to a class of trade who were loyal to the independents. The independent company had more competition from the Republic Oil Company than from the Standard or Waters-Pierce, because it
423 posed as an independent and handled a higher grade of oil.

Immediately following the organization of the Republic it did compete to some extent with the other respondents, but a decided change was made a year and a half later, when there ceased to be any show of competition (839, 877, 879, 937, 938, 959, 960 et seq.) The purpose of removing the plant and tank station at Springfield by Republic was to withdraw competition (970). However, some of the officials of the Republic claim that it was moved because it was not a paying station, although the evidence shows that Schofield, Shurmer & Teagle had a prosperous business there.

At St. Louis the evidence shows that the Republic Oil Company as in other places, was pushing the sale of high grade oils and yet it did considerable business in the way of tank wagon sales of common oils. It is a significant fact that the only competition it had with the Waters-Pierce Oil Company was on common grade oils which it sold as an incident to the sale of "palacine" and other high grade oils. As expressed by one of its officials, common oils were handled by it only as a matter of necessity to forward the sale of its high grades. Another significant fact is that the Republic never cut the tank wagon prices of the Waters-Pierce in St. Louis, but got its prices from the latter company and nearly always sold at the same prices. The first manager of the Republic in St. Louis, Frank R. Northrop, says he received instructions from the general manager, W. C. Teagle, to follow the prices of the Waters-Pierce, and that he did so. Also says that as to independents he was given a discretion and could lower or raise prices to suit conditions. He was also furnished prices by Waters-Pierce officials a day ahead card issues, in order that he could put in force any changes at the same time the Waters-Pierce did (1907-9, 117, 118, 1102 et seq.). From the principal
424 office of Republic Oil Company in Cleveland, instructions were sent out to the managers and field agents to make special

efforts to get independent trade, which meant a special fight on independent companies (1194, 1195). Mr. C. L. Ackert, general manager, Waters-Pierce Oil Company, says his company and Republic Oil Company were active competitors, and that he gave instructions to solicit the business of the Republic. Says the same competition was carried on against the International Oil Works, located in St. Louis and owned entirely by the Waters-Pierce Oil Company (2036, 2065-6). And so Mr. C. P. Ackert, manager of Missouri division, says that the Waters-Pierce and Republic were strong competitors and that the same competition was had with International Oil Works (2183, 2187, 2210, 2211). It is claimed that there was strong competition between the Republic and Waters-Pierce at Perryvilie and St. Genevieve in the falls of 1901, 1902, and 1903. Witnesses for Waters-Pierce Oil Company claim that the Republic agents cut the regular prices at those points and got the business during those three falls (2184 et seq. 2230-1). On the other hand, Mr. Heyer, who was manager of the Republic at that time in St. Louis, denies that his company cut the regular price and claims that he made special prices on account of the large quantities sold to be shipped by river for winter supply (2608). Mr. Crandall, assistant manager of Missouri division of Waters-Pierce Oil Company, during the full time of the existence of the Republic says the cut in prices at Perryville and St. Genevieve were all that he knew of (2282). The facts to be gathered from this evidence is that at those times the merchants of St. Genevieve and Perryville bought their winter supply of oils in the fall and had shipments made before the river froze up. No railroads reached those towns at that time. These purchases were made in large quantities and the prices fixed by the Republic were
425 special prices as a consideration of the quantities purchased. There was really no competition, because the Waters-Pierce did not attempt to sell at those points until after the Republic had made the sales. Mr. Crandall says the Republic Oil Company was one of its most aggressive competitors, yet he knew of no cutting prices except in the one instance above noted, although he says it did give some secret rebates (2281, 2283).

The general manager of Republic Oil Company, W. C. Teagle, says the company specially pushed the sale of high grade Pennsylvania oils (2514) and that competition continued between it and Standard Oil Company of Indiana, and Waters-Pierce Oil Company the same, as had been maintained by Schofield, Shurmer & Teagle, yet he says that the fight which the Republic first met in the field was not with the respondents, but with the independent dealers (2489, 2495, 2527).

When the "rate war" between the Republic Oil Company and National Oil Company at Kansas City was raging in 1902, P. C. Crenshaw, general sales agent of Standard Oil Company of Indiana, with headquarters at Chicago, went to Kansas City, and, acting in the capacity of peacemaker, he patched up the troubles and stopped the slashing and rebating (2619).

At all places where either the respondents met competition from an independent of any strength, oils sold cheaper than at other

points, although the independents all claim that they followed and adopted the prices of the respondents (177).

Rebating was common among all the companies, especially prior to 1900. The Waters-Pierce Oil Company gave many rebates as against the St. Louis Oil Company and Schofield, Shurmer & Teagle (326, 329, 838, 836).

At a time prior to 1897, at Jefferson City when Mr. Lohman was handling and selling oils of independents, he had very active
426 competition with the Waters-Pierce Oil Company. The Standard Oil Company refused to sell him oils, although he was a jobber and buying from any company he could. At that time he could buy the oils of Waters-Pierce Oil Company cheaper from grocers and druggists in St. Louis than he could from the company. The Waters-Pierce would reduce the prices at Jefferson City by the time his car of oil reached East St. Louis and would keep the prices down until he had sold out, then prices would go up again. Finally the railroad companies refused to deliver him oil in tank car lots unless he would erect a tank station (333, 334, et seq.).

The old firm of Schofield, Shurmer & Teagle carried on a very aggressive competition against both the Standard and Waters-Pierce at all points in Missouri where the Schofield firm sold oil, but the aggressiveness of this firm was not continued by the Republic (381, 383, 469).

Not only do all the witnesses testify who had any information on the question, but it is a conceded fact that there was no competition between the Standard Oil Company of Indiana and Waters-Pierce Oil Company. They did not sell oils at the same places at any points in the State, nor at the same points anywhere else. The division line between the two companies in Missouri was faithfully recognized and observed and when either company went beyond its limits it was merely by accident (439, 440, 461, 711, 714, 716, 718, 723, 763, 933, 1910).

The methods used by the Consolidated Tank Line Company and Standard Oil Company of Kentucky at Kansas City and in the Standard territory to secure a monopoly of the sales of refined oils were more drastic than those of the Standard of Indiana. These first companies resorted to any tactics, means or methods to secure business. Secret rebating was practiced to a large extent. A
427 complete system of espionage was in vogue by which agents followed the salesmen and wagons of Schofield, Shurmer & Teagle, and National Oil Company, ascertained to whom they were selling oils and endeavored to take their customers from them. In later years the Standard Oil Company had become so firmly fixed in that territory and enjoyed such complete control of the trade in the refined products of petroleum, that such drastic methods appear not to have been longer necessary. (641, 644, 645, 646). Still almost as extreme methods were practiced at Sedalia from 1897 to 1900 by the Indiana Company. During that time Schofield, Shurmer & Teagle had a large trade at that point, something like fifty per cent of the business. One Morgan was sent there as agent and was given instructions to destroy all competition. The Waters-Pierce Oil Com-

pany sold oil within about eighteen miles of Sedalia, but could not get nearer because of the division line. Morgan says he could deliver at points in Waters-Pierce territory more conveniently and sell cheaper than that company, owing to the competition between him and the agent of Schofield, Shurmer & Teagle, but he was not permitted to do so. He regularly received information from Kansas City of outside or independent shipments and did all he could to head them off or get them countermanded by rebates, other inducements and representations as to the inferiority of the grade of the outside oils. He was given general authority in such cases to cut prices and get the trade in any way he could. He also obtained all information he could relative to outside oils shipped in his territory and made reports to Kansas City (762, 763, 766, 767, 768 et seq. 774, 780, 782).

At Pierce City in southwest Missouri, the agent at that point had charge of four or five counties for Waters-Pierce Oil Com-
428 pany. He was near the Kansas line where the Standard sold, but it never came into his territory. The firm of Schofield, Shurmer & Teagle was a competitor, but the Republic, when it succeeded that firm, did not compete with him. Says he sold oil from one and a half to three cents more than the same oil sold for at Joplin and Carthage where the Waters-Pierce had competition with Wilhoit. He was told by the managers of the division that if he would keep Wilhoit out he could get from three to five cents more for oil (833, 836, 838, 839, 840).

Mr. Wilhoit, who has tank stations at Springfield and Joplin and ships oil to other points in southwest Missouri, says he never knew of any competition between Standard Oil Company and Waters-Pierce Oil Company. He sells in competition with the Standard in Kansas and the Waters-Pierce in Missouri. The prices of Waters-Pierce Oil Company were affected by his sales, but not by proximity of Republic Oil Company or Standard Oil Company. In other words, the fact that the Republic Oil Company distributed oils for a few months from Springfield, where the Waters-Pierce Oil Company maintained a plant and tank station, and that the Standard Oil Company of Indiana was a distributor in Kansas just across the line, did not cause the Waters-Pierce to vary from its regular prices at any point where there was not an independent dealer (871, 873, 874, 883).

Schofield, Shurmer & Teagle had been strong competitors of Standard at St. Joseph, but after they were succeeded by the Republic there was but little business done from that point by independents, there was practically no competition there whatever.

The superior equipment of the Waters-Pierce Oil Company and Standard Oil Company and their excellent devises and system de-
livery by tank wagons into the stores of customers, gave these
429 companies a great advantage over the independents whose equipments were not so extensive. By such means these respondents were able to control much trade without cutting prices, in fact they were able to command higher prices (1907, 1952).

While the discovery of new oil fields in Kansas, the Territories

and Texas, has created more independent refineries and distributors of the products of petroleum, and as a consequence more competition should exist and lower prices prevail (1951) yet, it is a fact that prices have not been lowered in Missouri since 1900, the tendency being rather upward, and the respondents have continued to sell about the same percentage of refined oils in the State.

The general manager of Waters-Pierce Oil Company states that where the company had competition, lower prices usually prevailed than at other points. He also says his company never cut prices below others in the first instance; that prices were reduced only when it became necessary to meet cuts by competition; that it was not necessary to lower prices because, with the superior facilities of the Waters-Pierce Oil Company, prices could be maintained against ordinary competition (2179 et seq. 2196). Still he says that the reason that prices were lower at Joplin than Jefferson City was due to the existence of competition at Joplin, while there was none at Jefferson City (2204, 2206).

Mr. Von Harten, who was in charge of city sales department of Waters-Pierce Oil Company from 1891 to 1904, says that both his company and Republic Oil Company gave some rebates to same customers, that all competitors in St. Louis followed the prices of Waters-Pierce fixed by its regular quotations sent out to the trade, and that the competition of Waters-Pierce Oil Company was the same with all companies—the same with Republic Oil Company as with International Oil Works, which the Waters-Pierce owned
430 (2237, 239, 2240, 2241, 2263, 2268, 2274). It is a fact that the Waters-Pierce Oil Company made a show of competition against all companies (2281) but it controlled prices and sold a large percentage of refined oils without reducing prices.

After a careful consideration of all the evidence touching the question of competition between the respondents the conclusion is irresistible that there never has been any substantial contests between them in the sale of the products of petroleum. It is conceded that the respondent, Standard Oil Company, and respondent, Waters-Pierce Oil Company, have never competed or sold oils at the same point in the State. Moreover the evidence fully bears out the conclusion that such competition as has existed between the respondents and independent dealers has been limited to such an extent as to permit independents to sell only about one-tenth of the total refined oils distributed in the State of Missouri.

Community of Interest Between Respondents.

Under this head will be set forth facts which bear directly upon the charge of a combination or conspiracy. As a matter of fact all the facts might be embraced under this head, because a consideration of the evidence as a whole is necessary in order to determine whether the respondents are guilty of entering into a combination, trust, agreement or understanding, for the purposes mentioned in the information. At the present only such facts will be found as bear immediately upon the subject of the paragraph. Afterwards an argument will be added by which the Commissioner will undertake to demonstrate the correlative connection of all the facts.

As a starting point it must be remembered that since the organization of the Standard Oil Company of New Jersey in 1882,
431 up to the present time, it has owned and controlled 2750 shares of the four thousand shares of the capital stock of the Waters-Pierce Oil Company (incorporated in 1878 and 1900); it has owned and controlled practically all the capital stock of Standard Oil Company of Indiana since its incorporation in 1889 up to the present time, and has owned and controlled all the capital stock of the Republic Oil Company since its organization in 1901. Beginning with 1897 and up to the present time the Standard Oil Company of Indiana has been doing business as a distributor of oil in certain well defined territory in Missouri, and during the same time the Waters-Pierce Oil Company has also been distributing oil in certain other well defined territory in Missouri. Since 1901 the Republic Oil Company has been selling as a distributor at certain points in Missouri, both in the territory of the Standard and of the Waters-Pierce.

The Waters-Pierce Oil Company has purchased all the refined oils it sold in this State and other States of the Union and nearly all the other products of petroleum sold by it from the Standard Oil Company and its allied interests (1891). The Standard of Indiana has handled oils mostly of its own refineries. Its predecessors in Missouri, Consolidated Tank Line Company and Standard Oil Company of Kentucky, purchased their supplies the same as the Waters-Pierce from Standard Oil interests. If any of these companies ever purchased any manufactured products of petroleum from interests outside of those connected with 26 Broadway, New York City, the evidence fails to disclose the fact (317, 507, 1905). Mr. Moffett, president of the Standard Oil Company of Indiana, which company operates one of the largest petroleum refineries in the world at Whiting, Indiana, a refinery at Neodesha, Kansas, and one at Sugar Creek, near Kansas City, says that his company sold only to
432 Standard Oil interests in Missouri, that is, respondent in this case (2440 et seq.). When the Republic Oil Company was first incorporated in 1901 to take over the property, assets and good will of Schofield, Shurmer & Teagle, and especially the high grade brand of illuminating oil called "palacine," this brand of oil and other high class brands received by them from said firm, were purchased from independent refineries in Pennsylvania. The evidence shows that "palacine" was a higher grade of oil than any brands handled by either of the other respondents and that no such oil was manufactured by Standard Oil interests. The Republic continued to purchase this class of goods from Pennsylvania sources other than from Standard Oil interests, at the same time purchasing all of its common grade goods from the Standard Oil Company, for about eighteen months. Then it began to purchase more from the Standard and its allied interests because as Mr. Nichols its president says, oils could be bought cheaper from these interests. The Atlantic Refining Company of Franklin, Pennsylvania, a company owned by the Standard Oil Company of New Jersey, began to furnish the Republic with "palacine." In the meantime, while the Republic

was making some show of competition against the other respondents by selling common oil and soliciting some of their customers, its object and purpose of organization was being actively prosecuted by pushing the sale of "palacine" and its high grade brands of gasoline and other products. This activity on the part of the Republic did not create competition with the other respondents because the bulk of their sales consisted of common oils. The independents had built up a trade everywhere on high grade Pennsylvania oils, hence the activity of the Republic in this line redounded to the detriment of the independents. By the year 1904 the Republic was purchasing practically all its oils of all grades from Standard Oil interests
433 (588, 634, 946, 947, 976, 998, 1098, 2483, 2535, 2536, 2582, 2588). It has been clearly established that at and before the institution of this suit the respondents were all buying practically all their oils from Standard Oil interests.

The instructions given to agents and field managers of the Republic Oil Company was to make a special drive on high grade oils and go after the business of the independent. Such instructions were given to manager and agents individually and they were also given at meetings of field managers at Cleveland, Ohio. Also it was shown that at Kansas City the Republic solicited business the Standard could not get and for the purpose of getting such business representations were made that it was an independent company. In southwest Missouri a field agent of Waters-Pierce Company, was given to understand shortly after the Republic succeeded Schofield, Shurmer & Teagle, that he would have no trouble with the Republic. One agent was told by the Cleveland authorities of the Republic to go after the independents and let the Standard alone (430, 456, 592, 587, 636, 637, 839, 989, 1104, 1114).

The respondent, Standard Oil Company, succeeded to the business of the Standard Oil Company of Kentucky and that company to the Consolidated Tank Line Company of Ohio. Each company took over the property, effects, territory, brands of oil, employés, etc., of the other. The only change made was in name. Each was a Standard Oil Company, owned either in the first instance by the trustees of the Standard Oil Trust or by the Standard Oil Company of New Jersey, which took over the interests held by the trust when it was dissolved in the State of Ohio (429, 430, 499, 640). In view of these conceded facts the Commissioner admitted a long line of evidence bearing on the conduct of business in this State by
434 all the companies named. And so with relation to the Waters-Pierce Oil Company, after it was shown that the incorporation of that company in 1900, was for the purpose of enabling the company to resume business in Texas, and that as a matter of fact the organization of the new company was merely a continuation of the old company under the same name with the same property, management, system, equipment and ownership of stock, evidence of acts and doings of the company prior to 1900 was deemed competent.

The Republic Oil Company was placed in the state of Missouri without any authority anywhere in the state to make prices as

against the other respondents. It was shown that at Kansas City prices on common oils at least sold by the Republic were made by the Standard Oil Company and communicated to the Republic agents by the Standard manager. Also, at St. Louis and in the Missouri division of Waters-Pierce Oil Company, managers and agents of the Republic were instructed, some say, to follow the market which was fixed by the Waters-Pierce and others say they were instructed to be governed in fixing prices by the Waters-Pierce prices. It is a fact that in Standard Oil territory Standard prices were the prices of the Republic, and in Waters-Pierce territory the prices fixed by that company were the prices of the Republic (622, 628, 1097, 2591, 2595, 2601, 2593, 2604, 2662). It is not shown that either of the other respondents fixed the price of "palacine" or other high grade oils of the Republic. These prices were furnished from Cleveland, and some discretion was given agents to vary prices in their competition with independents.

The Union Tank Line Company was a Standard Oil interest with its general offices at 26 Broadway, New York City. It furnished tank cars for transporting oils of Standard interests only.
435 No independent company used these cars. Oils from all the Eastern and Northern refineries of the Standard, including the refineries in Kansas, were shipped to all the respondents in these cars. They were also used by the Consolidated Tank Line Company of Kentucky (63, 101, 239, 484, 506, 588, 1783).

The evidence shows that the respondents had control of, and sold, from eighty-five to ninety per cent of all the refined oils sold in Missouri during the time laid in the information (125, 169, 172), and that practically all of this large percentage consisted of petroleum products obtained from, owned by, and allied with, the Standard Oil Company of New Jersey.

The evidence establishes the fact that it was finally admitted that during the time laid in the information, the Waters-Pierce Oil Company would not sell oil in Standard territory, nor would the Standard Oil Company sell in Waters-Pierce territory, and that orders sent to one company from merchants or jobbers doing business in the territory of the other were not filled by the company from which ordered, but were transmitted to the company in whose territory the customer lived, and was filled by that company (249, 841, 920, 1393, 868, 1006).

It is now conceded that there was a dividing line in the state, on one side of which the Waters-Pierce Oil Company distributed oil, and on the other side oil was distributed by the Standard Oil Company. Exhibit "A" gives an approximately correct line. Maps showing this division line were kept in the office of the Standard at Kansas City, in the office of the Waters-Pierce at St. Louis, and at 26 Broadway, the home of the Standard Oil interests. The line was first established and agreed on in 1878 between the Waters-Pierce Oil Company and Standard Oil Company of Ohio, and while the evidence does not disclose any special or express agreements
436 made concerning it since, yet it was accepted by the Consolidated Tank Line Company, the Standard Oil Company of

Kentucky, the respondents, and is still faithfully maintained. Joplin, in southwest Missouri, is only about six or eight miles from Galena, in Kansas, yet the Standard (respondent), which sells in Kansas, will not sell at Joplin, or in Missouri, nor will the Waters-Pierce sell at Joplin, in Kansas. However, when the Standard runs out of oil at Galena it sends over its tank wagons and fills them from the tanks of the Waters-Pierce Oil Company. Mr. Pierce says, one reason why he has not gone beyond the line is because he agreed not to do so (250, Ex. "A," 313, 464, 665, 833, 873, 876, 1913 et seq.).

During the time laid in the information, or from 1900 to the present time, the Standard Oil Company of New Jersey has regularly drawn the dividends on 2750 shares of the capital stock of the Waters-Pierce Oil Company. Dividends on the whole amount of stock except, perhaps, four shares, were declared in the name of and paid to H. C. Pierce, the stock standing of record in his name, and he regularly paid out about two thirds of the amount to the Seaboard National Bank, in New York City, or to some other representative of the Standard Oil Company of New Jersey (690 et seq. 1916, 1917, 1925).

Reference has already been made to the trade of Republic Oil Company in the high class grades of petroleum products. Its agents and managers were instructed to make such sales a special object. Sales in high class goods were greatly increased, while in the beginning something like twenty-five to thirty per cent of its sales consisted of such grades of oils, later on the percentage of such sales reached from fifty to sixty per cent (941, 962, 998, 2483).

An important fact to be considered in arriving at a solution of this case is the ownership of capital stock of the respondents
437 by the Standard Oil Company of New Jersey. Since the incorporation of the Republic Oil Company the New Jersey Company has owned all the stock of the Republic and Standard of Indiana and sixty-eight and one half per cent of the Waters-Pierce Oil Company. Four shares of stock of the latter company have been held by individuals acting as officers. When a change would be made and a new officer put in, the share of stock held by the retiring officer would be assigned, thus indicating that these shares were held for the purpose of officering the company. The significant fact is to be drawn from all the evidence that the Standard Oil Company of New Jersey and H. Clay Pierce were the only real stockholders in the respondent companies (1157, 1724, 1924, 2436, 1886). By an original agreement made in 1878 with Standard Oil Company of Ohio, and subsequently with trustees of Standard Oil Trust and Standard Oil Company of New Jersey, H. Clay Pierce was to have absolute control of Waters-Pierce Oil Company and its management, and the fixing of its policies. Mr. Pierce claims that he exercised such control and management from 1878 to the spring of 1904, when the 2747 shares of stock indorsed in blank by Pierce to the Standard of New Jersey, were caused by the last named company to be assigned of record to M. M. Van Buren, and are now held by him for that company. (1888, 1897.)

A significant custom which prevailed among these respondents was what was called the "transfer" of men from one company to another. When the Republic Oil Company began business, its original incorporators were all Standard Oil employés, two of them being clerks at 26 Broadway, New York City, and one being a clerk in the office of the Standard Oil Company of Indiana at St. Joseph, Missouri. With the exception of the general manager, a
438 number of field managers and quite a number of employés who had formerly been with Schofield, Shurmer & Teagle, who were retained by the Republic, its principal officers, accountants and other employés, were "transfers" from the Standard Oil Company.

Such transfers were also made from 26 Broadway to the Waters-Pierce Oil Company at St. Louis, Oklahoma, Texas and other points. In most instances the men transferred from Standard Oil Company to the Republic or Waters-Pierce were instructed to say nothing about the fact that they came from the Standard Oil Company (1564, 1565, 1515, 1516, 1517, 1518, 1566, 1579).

Prior to 1900, it is conceded that auditors working under Wade Hampton, general auditor of the Standard Oil Company with offices at 26 Broadway, regularly audited the books of the Waters-Pierce Oil Company, reported to Hampton and were on his pay rolls. After 1900 he continued to send auditors to St. Louis to audit the Waters-Pierce Oil Company books, but they were placed on the pay rolls of the latter company during the time they were engaged, at a salary invariably fixed by Hampton. These auditors reported to Waters-Pierce Oil Company, but a copy of their report was sent to 26 Broadway. Hampton's auditors also audited the accounts of the Republic Oil Company at Cleveland, Ohio, in the same way. After the services of these auditors had ended with the Waters-Pierce or Republic they at once became employés of Hampton (1151, 1434, 1435, 1578, 2317, 1752, 1753, 1756, 1777).

Hampton says it was his understanding that Standard Oil Company should audit accounts of Waters-Pierce Oil Company (1753). He personally audited the books of Standard Oil Company of Indiana, his men reporting to him and he paying them for their services (1754). After 1900 quite a number of letters were written by Hampton to J. P. Gruett, secretary of Waters-Pierce Oil Company, introducing various auditors whom he sent to audit the books
439 of that company and fixing the salaries of such auditors. (1758, 1760, 1761, 1763, 1765, 1767, 1755, 1769.) The conduct of Hampton in keeping a strict supervision over the accounts of the Waters-Pierce Oil Company, both before and after 1900 (the date of the new incorporation) was simply the exercise of good business judgment on the part of the majority stockholder in that company. The Standard Oil Company of New Jersey had the right and power (both of which were exercised) to do these things.

The Waters-Pierce Oil Company at all times made full reports regularly of its business transactions to 26 Broadway. Before 1900 these reports were sent to H. M. Tilford at 26 Broadway. Tilford was an officer of the Standard Oil Company of New Jersey. After

1900 they were sent to R. H. McNall, at 75 New street, New York City, being an entrance to 26 Broadway, he being designated the commercial agent of the Waters-Pierce Oil Company. These reports embraced, among other things, sales and deliveries of refined oils, deliveries of lubricating oils, etc., comparative sales, deliveries of specialty oils, deliveries of outside oils, deliveries of wax candles, etc., tank wagon and milk can deliveries, sales and deliveries of naptha, etc., marine sales, total sales and net results, semi-annual statement showing costs of barreling and marketing all kinds of oils and products of petroleum. These are the character of some of the reports made to 26 Broadway by Waters-Pierce Oil Company. A daily cash statement was sent. (2393.) Also Consolidated Tank Line Company and Standard of Indiana, made similar full reports to 26 Broadway. The daily cash statements sent by Waters-Pierce Oil Company were turned over to the comptroller of the Standard of New Jersey. While the reports were all, after 1900, addressed to McNall, they were distributed among the various officers at 26 Broadway and were passed on by a committee at that place which has not been definitely identified, some calling it a Domestic Trades
440 committee, some an Executive committee, some an Association of Gentlemen or Experts, and some claiming it to be the directors of Standard Oil Company of New Jersey, who had their office and held their meetings at that place. (243, 254, 506, 1785, 1786, 1787, 1789, 1791, 1932, 1933, et seq.) W. E. Bemis, an officer of Standard Oil Company at 26 Broadway in charge of the statistical department of Standard Oil interests, received reports from all Standard Oil interests (1681-2).

R. H. McNall, who was commercial agent of Waters-Pierce Oil Company after 1900, succeeding H. M. Tilford in that capacity upon the re-incorporation of that company in 1900, had been prior thereto and was afterwards an assistant to Tilford. Tilford knew of the reports coming to McNall and saw them (1819, 1829). Mr. Pierce says his company reported regularly to Standard Oil Company at 26 Broadway prior to 1900, and that the same reports were sent afterwards through McNall instead of mailing them directly to the heads of departments (1932, 1933, et seq.) He says that it was through McNall that the business of the Waters-Pierce Oil Company was transacted with Standard Oil interests at 26 Broadway (1934). Mr. Pierce further said, "McNall was furnished anything and everything that he asked for as the representative of the Standard Oil Company and its various heads" (1938). Andrew M. Finlay, who was vice-president and general manager of Waters-Pierce Oil Company, says he was instructed by Mr. Pierce to send any reports to 26 Broadway called for by McNall (2309, 2393). James A. Moffett, president of the Standard Oil Company of Indiana, says that company made full reports of all its business to 26 Broadway (2431).

Now the Republic Oil Company, through its general officers, managers, agents and salesmen, posed and represented the
441 company to be independent of Standard Oil interests and Waters-Pierce Oil Company. This position was taken wherever it sold the products of petroleum (938 et seq. 627, 629,

672, 1569, 2691). Yet shortly after its incorporation the two refineries purchased in the deal with Schofield, Shurmer & Teagle, the one at Cleveland and the one at Scio, Ohio, were dismantled and discontinued and oils were purchased from Standard Oil Company (933). Reports of all the business of the company were regularly made to 26 Broadway through Nichols, the president, at 75 New street, New York City (941). It occupied and sold identically in the same territory as the Standard Oil Company (949), except at points where it sold in Waters-Pierce territory. Its principal officers and employés were from the Standard Oil Company and sent to it by that company (950 et seq.). Its stock books and certificates of stock were kept at 26 Broadway (1151), and all its capital stock was owned by the Standard Oil Company of New Jersey. The general manager, W. C. Teagle, says it was an independent company and yet he assisted in making the sale of the property of Schofield, Shurmer & Teagle to the Standard Oil Company at 26 Broadway (2491, 2503). This same Teagle, as general manager, in circulars sent out to field managers, denied that the Standard had bought out the firm of Schofield, Shurmer & Teagle (2585).

Mr. C. L. Nichols, president of Republic Oil Company, and at the same time assistant to L. J. Drake, sales agent of Standard Oil Company of Indiana at 26 Broadway (1779, 2530), says it was necessary to conduct and represent the Republic as an independent company in order to control the trade in high class brands of oil formerly controlled by Schofield, Shurmer Teagle (2536). The independent companies made heavy assaults on the Republic from the be-
442 ginning because it was specially pushing a class of trade which created more competition with them. (2536). The cheaper oils were sold by the Republic, says Nichols, only as a necessity and as a means of selling high grades (2536). Nichols regularly consulted Drake and others at 26 Broadway about Republic reports (2542). A part of the president's salary was paid by Republic Oil Company and part by Standard Oil Company, and all reports to him came addressed to 75 New street (2543, 2545). Nichols says that after this action was brought it was necessary to dispose of the Republic because it had served its purpose and kept and maintained "palacine." The publicity of its ownership by the Standard Oil interests destroyed its usefulness and purposes. "Palacine" is now being sold by the Standard of Indiana. (2549, 2553.)

In Texas, Oklahoma and Arkansas the same conditions, so far as the relations between the Waters-Pierce Oil Company and Standard Oil Company were concerned, existed as in Missouri (1362, 1372, 1373).

L. H. Turrell, who was the first secretary of Republic Oil Company, was requested by J. L. Drake, then general manager of Standard Oil Company of Indiana, to go to New York and become an incorporator in a *sub rosa* corporation. At New York he found that Moffett, who was connected with both the Standard of New Jersey and of Indiana, was the principal negotiator for the purchase of the property of the firm of Schofield, Shurmer & Teagle (1171, 1172) and he was told that the Standard Oil Company was making the pur-

chase (1173). He was also told that he had been agreed on as secretary, treasurer and a director (1173). He was directed by Mr. Moffett to the office of Mr. Dodd, general counsel of Standard Oil interests, where he was asked to sign articles of incorporation by name F. A. Turrell, his correct name being L. H. Turrell. He was
443 told that the mistake in name would make no difference and he signed by the initials "F. A." (1176, 1178.) He was instructed by both Dodd and Moffett to use caution and not let it be known at Cleveland, where he went to work for the Republic, that he came from the Standard Oil Company (1177, 1188). George B. Wilson, chief clerk of the Standard Oil Company of New York, became, as he expressed it, an accommodation president and served for four months, when Nichols was elected (1180, 2565). James R. Taylor, the other incorporator, was private secretary to H. M. Tilford (1181). These three parties were the stockholders, officers and directors of the Republic Oil Company. They held meetings in the office of H. M. Tilford, director in the Standard Oil Company of New Jersey and a member of some committee at 26 Broadway. All their proceedings were directed and dictated by Tilford (1182, 1183).

Between 1903 and 1905 letters were written by various heads of departments at 26 Broadway, New York City, to Waters-Pierce Oil Company and Republic Oil Company. Those to the Waters-Pierce were sent to McNall, who signed them, and those to the Republic were signed by Nichols. These letters concerned all branches of oil business and called for various reports and numerous matters of information (1683 et seq. 1686, 1689, et seq. 1799, 1801, 1856, 1858, 1859).

R. P. Tinsley, who, in 1904, became connected with the Waters-Pierce Oil Company at St. Louis, or was "transferred," had, prior to that time, been a general agent at 26 Broadway for all Standard Oil interests. Just what his exact duties were in that capacity has not been shown (1778, 1779).

M. M. Van Buren, who holds 2747 shares of the capital stock of Waters-Pierce Oil Company, is a son-in-law of John D. Archbold, vice-president of the Standard Oil Company of New Jersey. John D. Rockefeller is the president of that company. (1733, 1734).

444 H. M. Tilford, a director in the Standard Oil Company of New Jersey, and a director in Waters-Pierce Oil Company prior to 1900, says that McNall, the commercial agent of Waters-Pierce Oil Company, at 26 Broadway or 75 New street, was his assistant both before and after he became such commercial agent.

Quite a number of letters were introduced during the examination of Tilford which ten- to throw light on the questions being considered, some of which are to the following effect: From McNall to J. P. Gruett, secretary of Waters-Pierce Oil Company, in 1903, giving the information that R. P. Tinsley had succeeded Walter Jennings as agent at 26 Broadway (1817); from McNall to J. P. Gruett in 1903, relating to salaries of employés of Waters-Pierce Oil Company; from McNall to Gruett in 1903, about Waters-Pierce div-

idends (1819). In this last letter McNall states that he seldom sees the daily cash report sent to his office; from H. M. Tilford to J. P. Gruett, in 1903, relating to the transfer of oils (1821); from McNall to S. Johnson, in charge of lubricating and specialty department of Waters-Pierce Oil Company at St. Louis, in 1904, fixing the price of wax (1822); from H. M. Tilford to J. P. Gruett in 1902, relating to sales reports (1824); from H. M. Tilford to J. P. Gruett in 1902, relating to banks where funds of Waters-Pierce Oil Company are deposited (1825); from McNall to A. M. Finlay, then president of Waters-Pierce Oil Company, that hereafter when letters were written him at 26 Broadway or 75 New street by Waters-Pierce Oil Company, to have a number of carbons made without date, signature or address, for distribution to other offices (1826); letter from H. C. Arnold, accountant at 26 Broadway, to R. P. Tinsley, then with Waters-Pierce Oil Company, relating to services of Preston, sent to audit for Waters-Pierce (1834).

Mr. Pierce says that all the various brands of oil sold by Waters-Pierce Oil Company, although different in names to those
445 used by Standard of Indiana, were manufactured by Standard Oil Company for his company (1908). He also says that after stock held by Standard Oil Company of New Jersey in Waters-Pierce Oil Company was transferred to M. M. Van Buren on the books of the company in the spring of 1904, the Standard Oil Company then began in various ways, by discharging old employés and substituting their own, to interfere with and take the management from him. This continued until 1905, when he induced the Standard Oil authorities to again put the management into his hands and his son, Clay Arthur Pierce, was elected president (1928 et seq.). Says he got both J. P. Gruett and R. P. Tinsley, the former had been secretary of Waters-Pierce Oil Company, and who was succeeded by Tinsley, from the Standard Oil Company. The Waters-Pierce Oil Company communicated with the various heads of departments at 26 Broadway through McNall, commercial agent (1928 *et seq*). A list of all salaries *commercial agent (1928 et seq). A list of all salaries* of Waters-Pierce employés were sent to 26 Broadway once a year (23116).

James A. Moffett, president of Standard Oil Company of Indiana, established his office as such president at 26 Broadway in 1901, about the time of the organization of the Republic Oil Company (2413). He assisted in the negotiations for the purchase of the property of Schofield, Shurmer & Teagle, and did caution L. H. Turrel not to talk too much when Turrel became secretary of the Republic Oil Company (2419). He says that the Standard of Indiana sold almost exclusively to Standard Oil interests (2423). He is also a director of the Standard Oil Company of New Jersey, and says that full reports come to 26 Broadway from the Standard of Indiana (2431). He says unqualifiedly that the directors of Stand-
ard Oil Company of New Jersey control the companies in
446 which it owns a majority of stock (2437, 2455). In the state of Missouri the Standard of Indiana as a refiner and wholesaler sells only to Standard interests (2440 et seq.). He also,

says that Col. Dodd, general counsel of Standard Oil interests, with offices at 26 Broadway, had charge of the incorporation of the Republic Oil Company (2447). "Eupion" oil, the high grade of Waters-Pierce Oil Company, and "eocene," the high grade of the Standard Oil Company of Indiana (both illuminating oils) were both manufactured by the latter company (2453). At all times the general offices of the Republic Oil Company were located at 26 Broadway. He always considered the Waters-Pierce Oil Company a Standard Oil interest (2468).

C. L. Nichols, who became president of the Republic Oil Company in the fall of 1901, and is still president, says that during all that time he has occupied an office with L. J. Drake, sales agent of the Standard Oil Company of Indiana, at 26 Broadway, as an assistant to Drake (2537). As such Drake had charge of certain territory, being the territory in which the Republic was doing business and carrying on a fierce competition with Mr. Drake's company (2538, 2546). He says there was an association of gentlemen at 26 Broadway who would meet and discuss Standard Oil interests in a general way (2541). Nichols said he had consultations with Drake about reports he received from Republic Oil Company (2541-2). His selection as president of the Republic was a surprise to him—he was informed of his selection by J. R. Taylor, one of the stockholders (2544).

The general officers of all the respondents either knew of their common ownership by the Standard Oil Company of New Jersey, or understood that they were Standard Oil interests and under the domination of the heads of departments at 26 Broadway. Most field managers and others occupying important positions and
447 in direct touch with the trade and distribution of oils in the field had at least heard of the relationship of the respondents and surmised that they were all connected with Standard Oil interests.

All officers and employés who testified on the part of the respondents or either of them, says there was no agreement or combination or understanding between any or all of them, to fix, maintain, or control prices of the products of petroleum, nor to control or limit the trade therein nor to control limit or prevent competition therein, in the state of Missouri. These denials are couched in general terms and go to all the charge contained in the information.

448 *Declarations of Law Asked by Respondents.*

At the conclusion of all the evidence and the oral arguments the Respondents filed with the Commissioner the following declarations of law, and asked that they be given by the Commissioner, to-wit:

Each respondent separately asks the Commissioner to make as a separate finding of fact each division and subdivision of the statement submitted with the brief of the Republic Oil Company and Standard Oil Company of Indiana.

Each respondent separately asks the Commissioner to give each of the following declarations of law:

I.

On the pleadings and proofs the findings must be for respondent.

II.

The information does not state facts sufficient to constitute a cause of action or to entitle the state to any relief in this action.

III.

There is no jurisdiction in this proceeding to inquire into any question of any alleged violation of sections 8965, 8966 and 8978 of the Revised Statutes of Missouri.

IV.

There is no jurisdiction in this proceeding to inquire into the question of any alleged violation of sections 8978 of the Revised Statutes of Missouri of 1899.

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V.

Each of sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978 is unconstitutional and void for each of the reasons mentioned in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company filed February 11th, 1906.

Each constitutional objection there made and presented is now separately made and presented the same as if separately written out as a separate declaration of law.

VI.

This respondent was not a party to or part of any pool, trust, agreement, confederation, combination or understanding to regulate, fix or control the price to be paid by the retail dealers and others in the state of Missouri for naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold in the state of Missouri.

VII.

This respondent was not a party to or part of any pool, trust, agreement, confederation, combination or understanding to control or limit the trade in the products of petroleum in the state of Missouri.

VIII.

This respondent was not a party to or part of any pool, trust, agreement, confederation, combination or understanding to control, limit or prevent competition in the business of buying the products of petroleum in said state between themselves and others.

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IX.

This respondent was not a party to or part of any pool, trust, agreement, confederation or understanding to deceive or mislead the public into the belief that respondents were separate and distinct corporations each pursuing an independent business as legitimate competitors in the purchase or sale of the products of petroleum.

X.

The information charges that the three respondents have wilfully and flagrantly abused, perverted and misused their rights, authority and franchise and assumed and usurped authorities and privileges not granted by the law of Missouri in that they between the — day of ——, 1901, and March 29th, 1905, created, entered into and became members of a pool, trust, agreement, confederation, combination and understanding among themselves and each other:

(*a*) To regulate, fix and control the price to be paid by the retail dealers and others in the state of Missouri for naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum offered for sale and sold in the state of Missouri.

(*b*) To control and limit the trade in the products of petroleum in the state of Missouri.

(*c*) To control, limit and prevent competition in such business of buying the products of petroleum in said state between themselves and others.

(*d*) To deceive and mislead the public into the belief that respondents were separate and distinct corporations each pursuing an independent business as legitimate competitors in the purchase and sale of the products of petroleum.

These, and these alone, constitute the issues of fact made by the pleadings.

451

XI.

After making the charges mentioned in the last request the information alleges as overt acts that by said pool, trust, agreement, confederation, combination and understanding respondents did certain things. These, however, are not substantive acts and are not necessary parts of the pleadings. They could be wholly rejected as surplusage, or, at most, treated as specific allegations of the specific acts constituting the general combination alleged.

XII.

So far as concerns oil and oil products, section 8965 only prohibits combinations to regulate or fix prices and maintain them when so fixed or to fix or limit the amount or quantity thereof.

XIII.

So far as section 8966 attempts to prohibit combinations designed or made with a view to lessen or which *to* tend to lessen free and full competition, it is limited to such combination whereby or under which it is stipulated, provided, agreed or understood that any person, association of persons or corporation doing business in the state shall not deal in, sell or offer for sale in this state any particular or specified article, product or commodity and shall not during the continuance or existence of any such arrangement, combination or agreement deal in, sell or offer for sale in this state any competing article, product or commodity.

XIV.

So far as concerns any pool, trust, combination, confederation, or understanding to control or limit trade or competition in such trade section 8978 only prohibits such pool, trust, combination, confederation or understanding by refusing to buy from or sell to another for the reason that such other was not a member thereof.

452 XV.

A plain remedy is provided for violation of section 8978 by the provisions found in sections 8979, 8980, 8981 and 8982 of the Revised Statutes of Missouri of 1899, and for such a violation quo warranto will not lie.

XVI.

The fact that the majority of the stock of the three respondents was owned by the Standard Oil Company of New Jersey will not justify a finding of a violation of section- 8965, 8966 or 8978.

XVII.

An arrangement for a territorial division, if made or maintained as between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, was not a violation of section- 8965, 8966 or 8978.

XVIII.

Unless there was a combination or agreement among two or more of the respondents to deceive and mislead the public into the belief that they were competing companies when they were not in fact, then there would be no finding against the Republic Oil Company simply because it may be that such company pretended to be a competitor of the other respondents when it was not such in fact.

XIX.

The giving of rebates to purchasers of oil is not in violation of law.

The views taken by the Commissioners under the next subhead which follows will answer all the propositions of law raised in the foregoing declarations.

453 *Final Conclusions upon the Law and Facts.*

The Issues.

It seems to be unnecessary to determine in this case whether the respondents have violated the common law of the state, or whether the common law in force in this state will sustain the charges in the information. The statutes, chapter one hundred and forty-three, Revised Statutes of 1899, are certainly broad enough to cover the facts and conditions shown to exist between these respondents. Therefore the first task to perform will be to ascertain the issues by applying the allegations of the information to the statutes.

An analysis of the information setting forth the substantial allegations of a combination or trust formed between the respondents, together with certain overt acts done in pursuance thereof will be given. The Commissioner finds that the information charges the respondents with the following violations of the various provisions of chapter 143, to which charges he will direct the evidence produced in this case.

It is charged that the respondents, between the — day of ——, 1901, and 29th day of March, 1905, created, entered into and became members of a pool, trust, agreement, confederation, combination and understanding among themselves, and each other (following language in section 8965):

(1) To regulate, fix and control the prices to be paid by retail dealers and others in the state of Missouri for the products of petroleum. (Sections 8965, 8978.)

(2) To control and limit trade in the products of petroleum in the state of Missouri. (Section 8978.)

454 (3) To control, limit and prevent competition in the business of buying and selling the products of petroleum in the state of Missouri, between themselves and others engaged in like business. (Section 8966, not the language of the Statute.)

These three specifications, manifestly based on the Statutes, constitute the alleged purposes for which the combination was formed. Then the information proceeds and alleges that the respondents have, by said pool, trust, agreement, confederation, combination and understanding,

(1) Fixed and maintained the prices of the products of petroleum sold and offered for sale by them in the state of Missouri. (Section 8978.)

(2) Have controlled and limited the trade in said products in this state. (Section 8965, 8966.)

(3) Have prevented and destroyed competition in the purchase and sale of said products of petroleum in this state. (Section 8965, 8966, 8978.)

(4) Have deceived and misled the public into the belief that respondents were separate and distinct corporations.

What follows seems to be specifications of overt acts committed in pursuance to the purposes of the combination charged to have been entered into and existing between the respondents. It is alleged that in pursuance of said pool, trust, agreement, confederation, combination and understanding, so entered into by said respondents as aforesaid, and for the accomplishment of the objects and purposes aforesaid,

(1) The State of Missouri has been divided into two territories, in one of which the Standard Oil Company sells and Waters-Pierce Oil Company does not, in the other the Waters-Pierce Oil Company sells and the Standard does not, and that the Republic Oil

455 Company sells in the territory of each of the other respondents to a class of trade who do not or will not buy of them.

(2) The respondents appeared and represented themselves to be separate, independent and competing corporations, when they were not and when said *said* secret combination existed between them,

thereby deceiving and misleading the public into the belief that they are separate and distinct corporations.

(3) The respondent, Standard Oil Company, as a refiner sells the products of petroleum in Missouri only to itself and the other respondents.

(4) The respondents have controlled and supplied to the retail dealers and the general public in Missouri from eighty-five to ninety per cent of the products of petroleum sold in Missouri.

(5) They have controlled the prices of the petroleum, have prevented competition among themselves, have secured control of the oil business and the purchase and sale of oil, have limited the trade therein and driven out competition, and the public has been deprived of free, full and wholesome competition in the sale of the products of petroleum.

The language of the information, both in substance and words, embraces combinations formed to regulate, fix and control the prices to be paid by retail dealers and others in the state for the products of petroleum, and to control and limit the trade in such products as interdicted by Section 8965 of Article 1 and Section 8978 of Article 2, Chapter 143, Revised Statutes of 1899.

Also the language of the information is broad enough to embrace combinations formed for the purpose, or made with the view to lessen, or which tend to lessen, competition in the sale of petroleum, as prohibited by Section 8966 of said Chapter 143.

It is contended that a violation of Section 8978 can not be
456 reached in this proceeding, because Article 2, of which that section is a part, gives circuit courts jurisdiction and provides a special or additional remedy in those courts. The purpose of this article as provided in section 8982 is not to repeal any subsisting acts relating to combinations in restraint of trade but to provide an *additional* remedy, for the control and restraint of pools, trusts and conspiracies in restraint of trade and unlawful combinations. The additional remedy provided is by injunction in courts which alone have jurisdiction in such cases, and is expressly made to reach not only the provisions of Article 2 but those of Article 1 as well. The Constitution of Missouri, Section 3, Article 6, gives the Supreme Court power to issue the writ of *quo warranto*. It must be conceded that it will issue against a corporation for the non-user or misuser of its corporate franchise, or for an infraction of its contract with the state by a violation of the anti-trust laws. As said by Judge Sherwood, in the case of State ex Inf. vs. Equitable Loan and Investment Co., 142 Mo. 325 (L. C. 337), "And the jurisdiction of the court being conferred by the Constitution, it is beyond the power of the legislature to take it away, and it will not be intended that a legislative enactment was designed to take such jurisdiction away, although such enactment should confer another and distinct remedy upon some inferior court or board." Article 2 of Chapter 143 does not confer or create a distinct and independent remedy but simply an additional remedy to those created by Article 1, and other remedies which are conferred by the Constitution, or are inherent in the courts. The general principles govern-

ing such proceedings as this are well expressed by Clark and Marshall in their private work on corporations in this language: "As a general rule, however, the charter of a private corporation will be forfeited, in proper proceedings by the state, for any wilful or fraudulent misuser or abuse of its franchises which injures
457 or menaces the interests or welfare of the state or the community in which it transacted business, whether the misuser or abuse consists in the exercises of franchise or power not conferred upon the corporation by its charter, or in violations of prohibitions in its charter, or in violations of prohibitions in general laws to which it is subject, or in the violation of established principles based upon the ground of policy." Sec. 314*b*.

High on Extraordinary Legal Remedies, Secs. 647, 648.
State ex rel vs. Gas Company, 153 Indiana, 483.
Turrett vs. Taylor, 9 Cranch, 43, 51.
State Ex. Inf. Hadley vs. Jockey Club, 92 S. W. R., 185.

Both Articles 1 and 2 of Chapter 143 declare pools, trusts, agreements, combinations, confederations and conspiracies, formed and entered into by corporations for the accomplishment of the purposes therein specified, to be illegal. These statutes are a declaration of the policy of the state, the violation of which by a corporation is a violation of its pact, entered into with the state when it was chartered as a domestic company, or licensed to do business as a foreign company, which violations give the state the right to withdraw such charter rights or cancel such license privileges.

Respondents maintain that inasmuch as Chapter 143 denounces the pools, combinations, etc., therein described as "conspiracies to defraud," the information should be tested by the rules of pleading relating to charging conspiracies, and that it is therefore, insufficient and states no cause of action. This action, although it does partake of the nature of a criminal prosecution in that heavy penalties may be imposed, yet it is a civil action and the rules of pleading in civil cases appertain. While the corporate rights of the respondents may be taken from them or fines or suspensions imposed, yet
458 these are not regarded as punishments for the commission of crime, but as results which may follow the failure of a corporation to live up to the implied contract between it and its creator, the state. The respondents are charged with forming and entering into a combination or conspiracy to do an unlawful act. Conspiracies may be formed to do an unlawful act or to do a lawful act by unlawful means. The rule of pleading in such cases, even in criminal proceedings, is that "If the act which the conspirators combined to perform is unlawful, it is unnecessary to set out in the indictment the means to be employed in accomplishing it. But if the end in view is lawful or indifferent, and the conspiracy only becomes criminal by reason of the unlawful means whereby it is to be accomplished, it becomes necessary to show the criminality by setting out such unlawful means." Ency. Pl. & Pr., Vol. 4, pages 713 and 714, 716, 717, C. W. & V. C. Co. vs. The People, 214 Ill., 421. Respondents say, "The information does not show how and by what manner the combination was formed. The overt acts pleaded do not

sufficiently show these details. They show what was done under the combination, and how the combination was effected." This is a very general objection without specifying the exact deficiencies of the information. Neither in the printed or oral arguments have any of the counsel for respondents pointed out what omitted matter or allegation would have supplied the defects. In view of the fact that the sufficiency of the information has not been brought to the attention of the court by proper plea, and that in this case reported in 194 Mo. L. C. 130, Judge Lamm said: "The information proceeds with due legal precision and particularity to inform this court of the scope and tenor of the trust scheme and of the specific methods claimed to have been employed therein, and thereby to rivet upon the people of this state, contrary to public policy and in the
459 very teeth of express law, an alleged odious monopoly," the Commissioner might have passed this question without comment. It is very clear that the information is sufficient and it only remains to dispose of a few other questions of law in a brief way and then proceed to a consideration of the question of the guilt or innocense of the respondents under the facts proven.

It is urged that the provision of Chapter 143, Revised Statutes of 1899, are in conflict with the first section of the 14th Amendment to the Federal Constitution and other constitutional provisions. So far as the Commissioner is concerned all these constitutional objections are disposed of by the following cases:

State Ex. Inf. vs. Standard Oil Co., 194 Mo., 124.
State Ex. Inf. vs. Firemen's Fund Ins. Co., 152 Mo., 1.
State Ex. Inf. vs. Armour Packing Co., 173 Mo., 356.
State Ex. Inf. vs. Continental Tobacco Co., 177 Mo., 13.
Finck vs. Granite Co., 187 Mo., 244.

The anti-trust laws of the state are penal in their nature and should be strictly construed. State vs. Insurance Co., 152 Mo. L. C., 41. As said by Judge Fox, "It must be remembered that this proceeding partakes of the nature of a criminal prosecution, severe penalties are imposed, hence it is not sufficient to warrant a finding adverse to respondents that we may entertain strong suspicions, or even strong probabilities, of their guilt." State vs. Tobacco Co., 177 Mo. L. C., 37. Yet, both the information and the facts should be given a reasonable and sensible construction, one of which, on the one hand, will give effect to the material and well stated charges in the information, and on the other such a construction and application of the facts as will elicit the truth and not mere su-
460 picions and probabilities. As said by Judge Lamm in this case, "We feel, at least, on solid ground on the proposition that statutes leveled against monopolies are buttressed upon the wisdom of the common law, and this court, constrained and enlightened by events of current history, is not required and does not deem itself invited to approach the interpretation of such statutes with a hostile or sour disposition, or to drive a coach and six through them, but, on the other hand, while sedu-ously protecting the rights and liberties of the individual from insiduous approaches, under whatever artful guise, we should at the same time not lose sight of the rights

of the community, and should endeavor to advance the beneficient purpose underlying such laws where it can be done without doing violence to constitutional provisions." State vs. Standard Oil Co., 194 Mo. L. C., 148. In Jacobson vs. Massachusetts, 197 U. S. L. C., 38, it was said by the supreme court of the United States that "All laws should receive a reasonable construction and general terms should be so limited in their application as not to lead to injustice, oppression or absurd conclusions. It will, therefore, be presumed that the legislature intends exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter."

Conclusions Upon the Facts.

As, in this case, where the state charges an abuse or a misuse of the corporate franchise, or acts of corporations contrary to the constitution and laws of the state, the informant must prove the charges as laid in the information or enough of them to warrant the finding that the respondents are guilty. If the state has failed to do this, then nothing remains but to so pronounce. State ex rel. Walker vs. Talbot, 123 Mo. 69, 71.

461 The charge is that the respondents, between the — day of —, 1901, and the 24th day of March, 1905, created, entered into and became members of a pool, trust, agreement, confederation, combination and understanding, among themselves and each other, to do certain things heretofore set out. The terms, pool, trust, agreement, confederation, combination and understanding, in the sense used in the information and according to modern adjudications are practically synonymous. United States vs. Adyson Pipe Co., 54 U. S. Rep., 761. Cook on Trusts, page 4. They are also denounced by the statute as conspiracies.

The respondents during the time laid in the information were separate and distinct corporations or entities, one organized under the laws of New York, one under the laws of Indiana and the other under the laws of Missouri. In 1882 the Standard Oil Company of New Jersey was organized, and about that time the Standard Oil Trust was formed. In 1899 the capital stock of the New Jersey Company was increased from three to one hundred and ten million dollars. In 1878 the first Waters-Pierce Oil Company was organized with a capital stock of one hundred thousand dollars. In 1882 its capital stock was increased to four hundred thousand dollars. About this time the Standard Oil Trust became the holder for the Standard interests of 2750 of the four thousand shares of this company. In about 1890 when the Standard Oil Trust was dissolved the Standard Oil Company of New Jersey became the owner of the 2750 shares of Waters-Pierce stock formerly held by the trustees of the Standard Oil Trust and owned that number of shares up to May, 1900, when the Waters-Pierce Oil Company was again organized, the Standard of New Jersey continuing to own and control 2750 shares of the four thousand shares of the new company. In 1889 the Standard Oil

Company of Indiana was incorporated. Practically all of its
462 stock from that time to the present was owned by the Standard of New Jersey. In 1901 the Republic Oil Company was incorporated and absolutely all its stock was owned then and continued to be owned ever since by the Standard Oil Company of New Jersey. The stock held by the New Jersey company in the respondent companies was held for it by individuals connected with Standard Oil interests at 26 Broadway. The management of the Waters-Pierce Oil Company by agreement was given to H. Clay Pierce, who was its president or managing influence from 1878 to the spring of 1904, when the Standard Oil Company of New Jersey exercised its right and power as a majority stockholder and took the management from him for about a year. The business and affairs of the other two respondents were, at all times, absolutely managed and directed from 26 Broadway, New York City, where their principal offices were located. As to the managerial acts and directions emanating from 26 Broadway, more will be said later on. Thus it will be seen that a motive for a combination between the respondents existed in the common ownership of their capital stock. Of the total capital stock of the three respondents, amounting to one million seven hundred and fifty thousand dollars, the New Jersey Company owned a little more than one million five hundred thousand dollars thereof.

Counsel for respondents, Waters-Pierce Oil Company, says there was no motive for any combination among the companies as to price. "If," says counsel, "the conclusion of combination is to be drawn from the fact that the Standard Oil Company of New Jersey owned a controlling interest in all these companies, that inference is positively repelled by the fact that Mr. Pierce and his interests, which actually controlled the operations of the Waters-Pierce Oil Company, would have enjoyed no benefits from any such combination." But is it not a fact that a combination of Pierce's interests with
463 Standard Oil interests was of vast importance to him? It enabled the Waters-Pierce Oil Company to control the trade and prices in the products of petroleum in one-half the state of Missouri, a good portion of Louisiana, all of Indian Territory, Oklahoma, Arkansas, Texas and the Republic of Mexico. Otherwise Mr. Pierce's one-third interest in the Waters-Pierce Company might not have been able to withstand competition from Standard Oil interests.

In State Ex Inf. vs. Standard Oil Company, et al., 194 Mo., 124, Judge Lamm says: "Yet experience has shown that stockholders showing a community of interest while in some cases innocuous, might in given cases be the very root from which the trust agreement grows."

In People vs. Chicago Gas Trust, 130 Ill., 275, it is said, "The control of the four companies by the appellee—an outside and independent corporation—suppresses competition between them, and destroys their diversity of interest and all motive for competition." Again, Noyes on Intercorporate Relations, paragraph 294, says: "A corporation which owns a majority of the shares of the capital

stock of another corporation controls it." In Pennsylvania R. R. Co. vs. Commonwealth, 7 Atlantic Reporter, 368, this plain and pointed language is used, "It is too plain to bear argument that the ownership of the stock of a corporation carries with it the control of the corporation." It is very true that the ownership of the stock does not carry with it the ownership by the stockholders of the property of the corporation. The property belongs to the corporation and is managed by the proper agents selected for that purpose. Humphreys vs. McKissock, 140 U. S., 304. That principle of law distinguishes this case from the case of State vs. Tobacco Co., 177 Mo., 37. There the Continental Tobacco Company purchased the tangible assets of a number of tobacco companies
464 and converted them into the assets of the tobacco company and proceeded to transact business in its own name and with its own assets and not by means of a number of subsidiary companies, organized at different times, in different states and under different names, as in the case of the Standard Oil Company of New Jersey. "Every corporation is a person-artificial, it is true, but nevertheless a distinct legal entity. Neither a portion nor all of the natural persons who compose a corporation, or who own its stock and control its affairs, are the corporation itself; and when a single individual composes a corporation, he is not himself the corporation. In such case the man is one person, created by the Almighty and the corporation is another person, created by the law." Exchange Bank vs. Macon Construction Co., 97 Ga., 7. The Standard Oil Company of New Jersey, through the individuals at 26 Broadway, who held for it a large majority of the stock of all the respondents, had control by virtue of such ownership and did control. Even if Mr. Pierce did vote the stock of the New Jersey Company, elect the directors of and control the Waters-Pierce Oil Company from May 1900, to February, 1904, no more can be said than that he was acting as the agent of the corporation and carrying out the will and wishes of the majority stockholder. That the New Jersey company had the power of control and that Pierce's authority was merely permissive, or that of an agent whose agency was subject to revocation at any time, was demonstrated in 1904 when his agency was revoked without consultation with him, and he was told by the general counsel of the company that the action was regular. The conclusion cannot be escaped that the common ownership of the stock of respondents by an outside corporation is a strong circumstance tending to show them guilty of an agreement, combination or conspiracy to effect the objects stated in the information.
465 There was a division of territory between the Waters-Pierce Oil Company and the Standard Oil Company of Indiana, not only in Missouri, but the two companies did not sell the products of petroleum at the same place at any point in the United States. While it is true no formal agreement was produced showing a division of territory—such was not necessary. The evidence shown clearly that an understanding was had, that divisions were made as far back as 1878, and faithfully kept by the two respondents to the present time. It is safe to say that except for the combi-

nation or understanding which has always existed between these companies, together with their common stock ownership, such agreement would have been annulled long ago. It will not do to say that one company sold oil in one part of the state and the other in another part, and that, therefore, there was no competition. The charge against them was that they did not compete. If these two companies had not combined their vast wealth, it is reasonable to believe that both would have established and maintained stations at all important commercial points in the state. If there had not been a close business and common stock ownership existing between them, orders received from the territory of the Waters-Pierce Oil Company to the Standard Oil Company would have been filled by the company receiving them. These orders were never transferred to other companies—to independent or outside companies—but they went from the one to the other of said respondents. Nor was the Waters-Pierce Oil Company a marketer of the brands of oil of the Standard Oil Company of Indiana. It posed to the public as a marketer of its own special brands of oil, manufactured, it is true, for it by the Standard Oil Company and its allied interests. So far as the public knew the "eocene" of the Standard and "eupion" of the Waters-Pierce were entirely different oils, although as a
466 matter of fact they may have been the same. If these two companies had been independent of each other a division of trade territory alone might not be sufficient to convict them of a violation of the statute. But it is an important circumstance to be considered in this case in connection with all the other facts proven, and especially in conjunction with the fact that for all practical purposes the three respondents were ruled and controlled from 26 Broadway, New York City, the center from which Standard Oil interests draw inspiration from one end of the United States to the other.

The reserved dominating power of control over the respondents was at 26 Broadway. To that place all the companies made full reports of its entire transactions. Prior to 1900, the Waters-Pierce Oil Company communicated with the various heads of departments of the Standard Oil Company of New Jersey at 26 Broadway, and gave any and all information called for. Matters of construction, salary lists and all questions concerning the expenditure of money by the Waters-Pierce were passed on at that place. H. M. Tilford, a director in the Standard of New Jersey, was then the directing force of the Waters-Pierce Oil Company. After 1900—after the Waters-Pierce Oil Company was re-organized for the purpose of enabling the company to resume business in the state of Texas, one R. H. McNall, a Standard Oil employé, and who continued as such afterwards, was appointed as commercial agent of the Waters-Pierce Oil Company. He continued in the office of H. M. Tilford. Letters, daily cash reports and many other reports covering the entire business of the Waters-Pierce Oil Company, were mailed to him, and he in turn distributed them to the proper departments. The Standard Oil Company of Indiana had its central office, that of president, at 26 Broadway. He was also a director in the Standard of New

Jersey. Reports of this company were sent to him and
467 he distributed them to the various departments representing Standard Oil interests. The president of the Republic Oil Company also had his office at 26 Broadway. He was an employé of the Standard Oil Company at that place, part of his salary being paid by each company. He occupied an office with L. J. Drake, sales agent of the Standard Oil Company of Indiana. He was assistant to Drake, and testified that they carried on an active competition between their companies. All communications to 26 Broadway from the Waters-Pierce Oil Company and Republic Oil Company were addressed to 75 New Street. The evidence discloses a great many detailed communications, letters and business transactions between all the respondents and 26 Broadway. The accounts of all the respondents were regularly audited by Wade Hampton, the general auditor of Standard Oil interests. Prior to 1900 these auditors were in the pay of Hampton and reported to him directly. After 1900, he sent the auditors out from his office, but, so far as the Waters-Pierce Company was concerned, they were directed by him to be placed on its pay rolls, he fixing their salary, which was done, and reports made to the Waters-Pierce Company, a copy of which was sent to 26 Broadway.

The Republic Oil Company was organized for the purpose of taking over the assets of Schofield, Shurmer & Teagle. For a great many years this firm had been a thorn in the side of the Standard Oil Company. It was entirely independent of Standard Oil interests. It had built up large sales in the Central and Southwest portions of the country in high grade illuminating oils and gasoline. Its special brand, the one which had gained the widest reputation of any other brands of illuminating oil on the market as the best burning oil was "palacine," a Pennsylvania product. That it
was a better and higher grade oil than any manufactured or
468 sold by Standard Oil interests is conceded. At the same time all other independent companies procured their oils principally from Pennsylvania independent refineries which fact enabled them to sell much oil in competition with the Standard and Waters-Pierce because of its superior quality. Hence the purpose of the Standard Oil Company in buying the property, good will and brands of Schofield, Shurmer & Teagle. It was necessary to create an independent company which could handle and sell Pennsylvania products in competition with independent companies. That was the purpose of the Republic Oil Company, which fact was conceded by Mr. Nichols, its president. Since this case was begun the Republic, except in Missouri, had sold all its assets and brands of oil to the Standard Oil Company of Indiana, which is entirely owned by the Standard of New Jersey, which in turn owned entirely the Republic Oil Company. It amounts to a sale by the Standard Oil Company to itself. The sale was made, so Mr. Nichols says, because of the disclosures made in this case, its purpose had been served—it had maintained the "palacine" brand. The Republic Oil Company, while it claimed to be independent and its managers and agents were directed to so represent it which they did, be-

gun by a fierce contention for business between itself and the independent companies. It never sold to any extent the class of oils handled by the Waters-Pierce Oil Company and the Standard Oil Company. Such oils were handled by it as an incident to its main business, the sale of high class oils, and were invariably sold at prices fixed by one or the other of the other respondents. While it was, so far as the public was concerned, an apparent independent company and made a show of competition with the Waters-Pierce Oil Company in isolated instances, yet as a matter of fact it greatly aided the other respondents in maintaining the prices of
469 common oils which constituted the great bulk of their sales.

If the Republic Oil Company had been a real independent company it would not have dismantled the two refineries purchased at the time of the sale of Schofield, Shurmer & Teagle to the Standard Oil Company. One of these refineries was located at Cleveland and the other at Scio, Ohio, and had furnished to Schofield, Shurmer & Teagle a large amount of their common oils.

Another significant fact bearing on the question of a combination and understanding between respondents was what was termed the "transfer" of employés from one company to the other. The employés of the Republic Oil Company, except the old employés of Schofield, Shurmer & Teagle retained, were practically all men transferred from Standard Oil interests. Some of the principal officers and many of the subordinate employés of the Waters-Pierce Oil Company came from the Standard Oil Company.

All the dividends on the stock of the Standard Oil Company of Indiana and Republic Oil Company, and the dividends on two-thirds of the stock of Waters-Pierce Oil Company, were paid into the treasury of the Standard Oil Company of New Jersey. The contention is made that Mr. Pierce derived no benefit from the dividends so paid and as he was in control of the Waters-Pierce Oil Company that company should not be held responsible for this condition. Mr. Pierce as an individual might not have been responsible for this state of facts, yet the company, the corporate entity, through its controlling power, the majority stockholder, was undoubtedly responsible. And while the evidence does not show that Mr. Pierce participated in a division of the dividends paid to the Standard of New Jersey by respondents, yet it does show that by reason of
470 such ownership of stock and understanding existing between respondents he was enabled to draw, according to his own statement, from six to seven hundred per cent per annum as dividends on 1250 shares owned by him.

Another strong circumstance tending to show a combination between respondents for the purposes alleged in the information, is the fact that both the Standard Oil Company of Indiana and Waters-Pierce Oil Company purchased all the products of petroleum and brands of oil sold by them from the Standard Oil Company and its allied interests. The Republic Oil Company for the first year and a half purchased its high grade oils from independent companies and its common oils from the Standard Oil Company. After that time and up to the present it purchased practically all its oils of

all grades, including "palacine," from the Standard Oil interests. These oils were shipped in the tank cars of the Union Tank Line Company (a Standard Oil Company), and it is a significant fact that no independent company got oils shipped in these cars. While there is testimony to the effect that the Standard Oil Company, as a refiner and wholesaler, would sell to any person who wanted to buy and pay their prices, yet the fact has been proven that it sold almost exclusively to companies allied and subsidiary to it.

Again the system in vogue throughout the territory of both the Standard Oil Company and Waters-Pierce Oil Company, since 1878, of espionage upon the shipments of outside or independent companies, and the efforts of their agents to head off and prevent such shipments being sold, tends to show an understanding between those respondents to monopolize the sale of products of petroleum.

The percentage of sales of refined oils by the respondents, amounting to at least ninety per cent of the whole amount of such
471 oils sold in Missouri, was due to the power wielded by them, which in turn was due to a combination of their vast strength and wealth.

Therefore did the respondents form a combination as charged in the information. A few quotations from the law will be given. "The gravamen of the offense of conspiracy is the combination. Arrangements to prevent competition in trade are, in contemplation of law, injurious to trade, because they are liable to be injuriously used. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity." State Ex Inf. Armour Packing Co., 173 Mo. 356. In the same case it is further said, "It is not essential that its results should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition." In the case of State Ex Inf. vs. Continental Tobacco Co., 177 Mo. 1, Judge Fox uses language very pertinent to the facts of this case, as follows: "The Statute contemplates the existence of at least two or more corporations, individuals or partnerships, so as to agree or combine with each other to do the prohibited acts mentioned in the Statute. In other words, it is intended to operate upon two or more corporations or individuals, who, so far as the public are concerned, indicate that they are pursuing an independent business, legitimate competitors, when, in fact, there is a secret agreement by which the very things condemned by the Statute are accomplished. The public has rights which the law contemplates shall be respected. Neither corporations, individuals, nor partnerships are permitted to deceive or mislead the public by an apparent competition, when in fact none exists." While it is true there was no competition between the respondents, Water-Pierce Oil Company and Standard Oil Company, nor even apparent
472 competition, yet they did pose to the public as separate and independent companies, while each was striving to enrich a common treasury, and by an indefinite agreement as to time divided trade territory and did not compete. Again, Judge Fox says in the

above cited case and quoting from the supreme court of Texas, "In order to constitute a trust, within the meaning of the Statute, there must be a combination of capital, skill or acts by two or more. 'Combination as here used, means union or association.' If there be no union or association by two or more of their capital, skill or acts, there can be no combination and hence no trust." The respondents constitue three separate and distinct corporate entitles. That the capital of each was working to one common good, depositing their dividends in one common treasury, there is no question. The skill and acts of all three were employed to one main mutual purpose, the creation of earnings for the benefit of the Standard Oil Company of New Jersey. The supreme court of Ohio, speaking of the Standard Oil Trust which formerly held a majority of the stock of Waters-Pierce Oil Company and was succeeded in such holding by the Standard Oil Company of New Jersey, said, "Its object was to establish a virtual monopoly of the business of producing petroleum, and of manufacturing, refining and dealing in it and all its products, throughout the entire country, and by which it might not merely control the production, but the price, at its pleasure. All such associations are contrary to the policy of our State and void." State vs. Standard Oil Company, 49 Ohio, St. 137. In the case of State vs. Gas Company, 153 Ind. 483, the supreme court of Indiana said, "The authorities affirm, as a general rule, that, if the act complained of, by its results, will restrict or stifle competition, the law will regard such act as incompatible with public policy, without any proof of evil intent on the part of the actor or actual injury to the public. The injury is not as to the degree of injury inflicted upon the public; it is sufficient to know that the inevitable tendency of the act is injurious to the public."

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The evidence shows that in the territory of the Waters-Pierce Oil Company it fixed, controlled and regulated prices. The Republic Oil Company, through its field agents and employés instructed by its officers to do so, followed the prices fixed by the Waters-Pierce. As shown before, no real competition between the Republic Oil Company and that company existed, although it posed as an independent company and competitor of the Waters-Pierce. Its mission as has been shown, was to divert the independent companies into a fight on the sale of high class goods and give the Waters-Pierce a freer field on the principal products it handled, the common class of goods. The independents, as intelligently explained by Mr. Wilhoit of Springfield, were powerless to undersell the Waters-Pierce Oil Company without taking chances of being driven entirely out of business. Any way the Waters-Pierce Oil Company dictated, maintained, regulated, fixed and controlled the prices to be paid by retail dealers in its territory. The same conditions existed in the territory of the Standard Oil Company in Missouri. While the Republic Oil Company made some show of competition against the Waters-Pierce Oil Company it made no such as against the Standard, except, as in the other territory, it made the claim everywhere that it was independent of the other respondents, had no connection with them and was a competitor of them. Prices at which the

Republic sold in Standard territory were invariably fixed at Kansas City by the Standard Oil Company. That the trade in
474 the products of petroleum, that is illuminating oils and gasoline, was controlled by the respondents is made clear by the evidence showing that they sold ninety per cent of such products sold in Missouri. This evidence justifies the statement of Mr. Wilhoit that his experience, both as an employé of the Standard Oil Company and as an independent dealer, was, that the Standard Oil Company or Waters-Pierce Oil Company would suffer the independent to control about ten per cent of the business, but if he attempted to go beyond and control more trade, prices were so reduced that the independent could not long exist. That prices were maintained is evident from the fact that during the last ten years they have tended upward although large discoveries of oil fields have been made in States and Territories bordering on Missouri. It is further clear from a consideration of all the evidence that a combination was formed between the respondents to control, limit and prevent competition in the business of buying and selling the products of petroleum in the State of Missouri.

Wherefore, after giving due and careful consideration to all the testimony, the Commissioner finds that the respondents, Standard Oil Company of Indiana, Waters-Pierce Oil Company and Republic Oil Company, on the 8th day of July, 1901, in the State of Missouri, created, entered into and became members of a pool, trust, agreement, confederation, combination and understanding among themselves and each other, which pool, trust, agreement, confederation, combination and understanding, created and entered into by respondents, as aforesaid, continued to exist and be maintained up to the date of filing the information in this case, and were created and entered into for the following purposes:

475 (1) To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the products of petroleum.

(2) To control and limit trade in the products of petroleum in the State of Missouri.

(3) To control, limit and prevent competition in the business of buying and selling the products of petroleum in the State of Missouri, between themselves and others engaged in like business.

That said respondents, Standard Oil Company of Indiana, Waters-Pierce Oil Company and Republic Oil Company, during the above specified time, under and by virtue of said pool, trust, agreement confederation, combination and understanding, so created and entered into, have

(1) Fixed and maintained the prices of the refined products of petroleum, sold and offered for sale by them and others in the State of Missouri.

(2) Controlled and limited the trade in said refined products of petroleum in the State of Missouri.

That in pursuance to said pool, trust, agreement, confederation, combination and understanding, so created and entered into by the respondents, they have controlled the prices of the refined products

of petroleum, prevented competition among themselves and among themselves and others therein, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the State, thereby depriving the people of the State of free, full and wholesome competition in the sale of the refined products of petroleum, and have, under and in pursu-
476 ance of said pool, trust, agreement, confederation, combination and understanding, so created, entered into and maintained, deceived and misled the public into the belief that they were separate and distinct corporations pursuing an independent business.

All contrary to and in violation of the laws and public policy of the State of Missouri.

Done this 24th day of May, 1907.

Respectfully submitted,

ROBERT A. ANTHONY,
Special Commissioner.

477 And afterwards, to-wit, on the 6th day of June, 1907, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL Co. et al., Resps.

Comes now the Standard Oil Company and Republic Oil Company, two of the respondents herein, by attorney and file their exceptions to the report and findings of Robert A. Anthony, Commissioner herein.

Which said exceptions are in words and figures as follows, to-wit:

478 In the Supreme Court of Missouri, Court en Banc, April Term, 1907.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Exceptions of Standard Oil Company to Report and Findings of Robert A. Anthony, Commissioner.

Now comes the said respondent and respectfully says that the Commissioner erred in each of the respects hereinafter set forth, each of which specifications, and each subdivision thereof, is presented as a separate and distinct exception to said report and findings.

In each of the instances where such exception is taken to any portion of the report which states a legal conclusion, the report is, in such respect, contrary to the law, and where any portion thereof

purports to state a matter of fact, it is contrary to the evidence and to the weight thereof, and is wholly unsupported thereby.

479 Thereupon this respondent respectfully shows that the said Commissioner erred in each of the following matters:

One. In failing to return as part of his report, so that exceptions to his actions thereon might be filed, each request for a separate finding of fact, which the report at page 273 shows to have been made by the recital:

"Each respondent separately asks the Commissioner to make as a separate finding of fact each division and subdivision of the statement submitted with the brief of the Republic Oil Company and Standard Oil Company of Indiana."

Two. In failing to give each of the requests for findings of facts so set forth in the brief before the Commissioner, numbered respectively I to XIX, inclusive. (Each refusal of each request is hereby separately excepted to.)

Three. In refusing to give each of the requests for declarations of law set forth in the report at pages 273 to 277, inclusive. (Each refusal of each request is hereby separately excepted to.)

Four. In refusing to directly pass upon and return with his report as distinct rulings his action upon each of the said requests for declarations of law instead of reciting as is done on page 277:

"The views taken by the Commissioner under the next subhead which follows will answer all the propositions of the law raised in the foregoing declarations."

Five. In failing to separately and distinctly report the facts

480 found and the conclusions of law based thereon instead of returning a partial and unfair summary of the evidence, and general mixed conclusions of law and fact with no limitation of the basis for their adoption.

Six. In holding that there was jurisdiction in this proceeding by prohibition to directly enforce the provisions of each of Sections 8965, 8966, 8967, 8971, 8972 and 8978.

Seven. In refusing to recognize the contention of respondent that Section 8965 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions in the 14th Amendment to the Constitution of the United States, as particularly set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Eight. In refusing to recognize the contention of respondent that Section 8966 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions of the 14th Amendment to the Constitution of the United States, as particularly set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Nine. In refusing to recognize the contention of respondent that Section 8971 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the

provisions of the 14th Amendment to the Constitution of the
481 United States, as set forth in the second amended answers of the Standard Oil Company of Indiana, and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Ten. In refusing to recognize the contention of respondent that Section 8972 of the Revised Statutes of 1899, was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions of the 14th Amendment to the Constitution of the United States, as set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Eleven. In making that portion of the report set forth upon pages 278 to 285, inclusive, under the heading of "The Issues."

Twelfth. In making each of the statements upon page 280 reading:

(*a*) "The language of the information, both in substance and words, embraces combinations formed to regulate, fix and control the prices to be paid by retail dealers and others in the state for the products of petroleum, and to control and limit the trade in such products as interdicted by Section 8965 of Article 1, and Section 8978 of Article 2, Chapter 143, Revised Statutes of 1899."

(*b*) In making each of the statements upon page 280 reading: "Also the language of the information is broad enough to embrace combinations formed for the purpose, or made with the view to lessen, or which tend to lessen, competition in the sale of petroleum, as prohibited by Section 8966 of said Chapter 143."

482 Thirteen. In making each statement in that portion of so much of the report as begins upon next to the last line upon page 280 with the words, "It is contended," and ending with the word "proven" upon line 7 on page 284.

In making each of the statements upon page 284:

(*a*) "It is very clear that the information is sufficient."

(*b*) "It is urged that the provisions of Chapter 143, Revised Statutes of 1899, are in conflict with the first section of the 14th Amendment to the Federal Constitution and other constitutional provisions. So far as the Commissioner is concerned all these constitutional objections are disposed of by the following cases:

State Ex Inf. v. Standard Oil Co., 194 Mo., 124.
State Ex Inf. v. Firemen's Fund Ins. Co., 152 Mo., 1.
State Ex Inf. v. Armour Packing Co., 173 Mo., 356.
State Ex Inf. v. Continental Tobacco Co., 177 Mo., 13.
Finck v. Granite Co., 187 Mo., 244."

Fifteen. In making each of the statements found in each paragraph under the heading "Conclusions Upon the Facts," as set forth upon pages 285 to 301 inclusive.

Sixteen. In holding, upon page 288, that the ownership of a majority of stock of the three respondents suppressed competition, destroyed their diversity of interest and motive for competition, and carried with it control of the corporation.

Seventeen. In making each one of the statements upon page 289 reading:

483 (*a*) "The Standard Oil Company of New Jersey, through the individuals at 26 Broadway, who held for it a large majority of the stock, of all the respondents, had control by virtue of such ownership and did control."

(*b*) "Even if Mr. Pierce did vote the stock of the New Jersey Company, elect the directors and control the Waters-Pierce Oil Company from May, 1900, to February, 1904, no more can be said than that he was acting as the agent of the corporation and carrying out the will and wishes of the majority stockholder. That the New Jersey Company had the power to control and that Pierce's authority was merely permissive, or that of an agent whose agency was subject to revocation at any time, was demonstrated in 1904, when his agency was revoked without consultation with him, and he was told by the general counsel of the company that the action was regular."

(*c*) "The conclusion cannot be escaped that the common ownership of the stock of respondents by an outside corporation is a strong circumstance tending to show them guilty of an agreement, combination or conspiracy to effect the objects stated in the information."

Eighteen. In making:

(*a*) "Each of the statements, beginning with the words: 'There was a division' in line 1, page 290, and ending with the words 'to the other,' on line 11, page 291."

(*b*) Each statement beginning upon pages 290 and ending on line 1, page 291, reading:

"Nor was the Waters-Pierce Oil Company a marketer of the brands of oil of the Standard Oil Company of Indiana. It posed to the public as a marketer of its own special brands of oil, manufactured, it is true, for it by the Standard Oil Company and its allied

484 interests. So far as the public knew the 'Eocene' of the Standard and 'Eupion' of the Waters-Pierce were entirely different oils, although as a matter of fact they may have been the same."

Nineteen. In making:

(*a*) Each statement beginning with the words, "The reserved dominating power," on line 12, page 291, and ending with the word "Broadway" on line 24, page 292.

(*b*) Each statement beginning with the words "The Republic Oil Company" on line 25, page 292, and ending with the words "common oils" on line 9, page 294.

(*c*) Each statement beginning with the words "Another significant fact" on line 10, and ending with the words "Oil Company" on line 19, page 294.

(*d*) Each statement beginning with the words "All the dividends" on line 20, page 294, and ending with the words "Shares owned by him" on line 4, page 295.

(*e*) Each statement beginning with the words "Another strong circumstance," line 5, and ending with the words "subsidiary to it," line 21, page 295.

(*f*) Each statement beginning with the words "Again the system," line 22, and ending with the words "products of petroleum," line 29, page 295.

Twenty. In saying on page 293:

"That the class of oils handled by the Waters-Pierce Oil Company and Standard Oil Company, who bought the Republic Oil Company, were invariably sold at prices fixed by one or the other of the respondents."

Twenty-one. In saying on page 294:

485 "If the Republic Oil Company had been a real independent company it would not have dismantled the two refineries purchased at the time of the sale of Schofield, Shurmer & Teagle to the Standard Oil Company."

Twenty-two. In making the statements upon pages 296 and 297 reading:

"While it is true that there was no competition between the respondents, Waters-Pierce Oil Company and Standard Oil Company, nor even apparent competition, yet they did pose as separate and independent companies, while each was striving to enrich a common treasury, and by an indefinite agreement as to time divided trade territory and did not compete."

Twenty-three. In making each statement beginning with the words "the evidence shows," page 298, line 6, and ending with the words "of Missouri," upon line 21, page 299.

Twenty-four. In each separate finding upon pages 299 and 300 "that respondent was with its co-respondents a party to a pool, trust, agreement, confederation, combination and understanding."

(*a*) "To regulate, fix and control the prices to be paid by retail dealers and others in the state of Missuori for the products of petroleum."

(*b*) "To control and limit trade in the products of petroleum in the state of Missouri."

(*c*) "To control, limit and prevent competition in the business of buying and selling the products of petroleum in the state of Missouri, between themselves and others engaged in like business."

Twenty-five. In each separate finding on page 300, that respondent with its co-respondents:

486 (*a*) "Fixed and maintained the prices of refined products of petroleum, sold and offered for sale by them and others in the state of Missouri."

(*b*) "Controlled and limited the trade in said refined products of petroleum in the state of Missouri."

(*c*) "Controlled the prices of the refined products of petroleum, prevented competition among themselves and among themselves and others therein, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the state, thereby depriving the people of the state of free, full and wholesome competition in the sale of the refined products of petroleum."

(*d*) "Deceived and misled the public into the belief that they were

separate and distinct corporations pursuing an independent business."

Twenty-six. In making each statement in each paragraph of the report found upon pages 224 to 229, inclusive, under the head of "Waters-Pierce Oil Company."

Twenty-seven. In making each statement in each paragraph of the report found on pages 229 to 232, inclusive, under the head of "Republic Oil Company."

Twenty-eight. In making each statement in each paragraph of the report found on pages 232 to 234, inclusive, under the head of "Standard Oil Company (of Indiana)."

Twenty-nine. In making each statement in each paragraph
487 of the report found on pages 234 to 236, inclusive, under the head "Standard Oil Company of New Jersey."

Thirty. In making each statement found in each paragraph of the report on page 236 under the head of "Grades and Brands of Oils."

Thirty-one. In making each of the statements in each of the paragraphs upon pages 236 to 238, inclusive, under the head "Standard Oil Company did not sell to Independents."

Thirty-two. In making each of the statements found on pages 238 and 239 under the head of "Territorial division in Missouri."

Thirty-three. In making each of the statements found in each paragraph of the report on pages 239 to 243, inclusive, under the head of "Prices of Oil, How Fixed."

Thirty-four. In making each of the statements found on pages 243 to 244 under the head of "Reports of Competitive Shipments."

Thirty-five. In making each of the statements in each of the paragraphs on pages 244 to 245, inclusive, under the head of "Percentage of Business."

Thirty-six. In making each statement in each paragraph of pages 246 to 255 inclusive, under the head of "Competition Between Respondents and Others."

Thirty-seven. In making each statement in each paragraph on pages 255 to 272, inclusive, under the head of "Community of Interest Between Respondents."

Thirty-eight. In making each of the statements on page 237.

488 (*a*) "There is considerable evidence going to show that at times independent dealers tried to buy from Standard Oil interests, but could not do so."

(*b*) "Stoeke, of the St. Louis Oil Company back in 1893 says he tried to buy of the Standard Oil Company at East St. Louis, but its agent refused to sell him (59, 56, 84, 62, 146, 324, 381, 460.)"

Not only does the testimony not warrant any such statement, but it is directly in conflict with that made upon page 295, reading:

"While there is testimony to the effect that the Standard Oil Company, as a refiner and wholesaler, would sell to any person who wanted to buy and pay their prices, yet the fact has been proven that it sold almost exclusively to companies allied and subsidiary to it."

This latter statement should have been in the form of a direct

finding based upon the undisputed evidence; at least upon the overwhelming weight thereof.

Thirty-nine. In making each of the following statements upon pages 241 and 242 respectively:

(*a*) "The Republic Oil Company followed the prices of Waters-Pierce Oil Company in its territory. Its managers were instructed to follow these prices, therefore the only reasonable inference to draw from all the testimony on this question is that the Waters-Pierce Oil Company dictated its prices and that it was understood that it should do so. (2591, 2592–3, 2595.) There was no authority in St. Louis for making prices for the Republic except the Waters-Pierce market (2604, 1097)."

(*b*) "When Andrew M. Finlay was vice-president of
489 Waters-Pierce Oil Company, Maywood Maxon says Finlay told him that he (Finlay) fixed prices at which Republic Oil Company sold oils (192). While Mr. Finlay and other officers of the Waters-Pierce deny this statement was made, yet, notwithstanding the fact that the statement may not have been made, the evidence taken as a whole demonstrates that the facts embodied in the statement were true."

(*c*) "As to the respondent, Standard Oil Company, the conditions as to fixing prices in this territory were almost exactly the same as those in Waters-Pierce territory, except that in Standard territory it occupied the commanding position and fixed and maintained prices for itself and all other oil dealers."

(*d*) "The Manager of the Standard Oil Company at Kansas City regularly fixed the prices for Republic Oil Company, which were obtained by the manager of the Republic at any time, and he was always notified of a decline or increase (589 *et seq.*, 622, 2661, 2662)."

Forty. In the statement made on page 243 reading:

"All witnesses for respondents claim there was no agreement or understanding between any of the respondents to fix and maintain prices."

Whereas, such statements should have been in the form of finding of ultimate fact as it was sustained by the undisputed testimony; in any event, by the overwhelming weight thereof.

Forty-one. In summarizing in a partial and incomplete form, the testimony of witnesses and reporting a summary thereof, misleading in its nature, and omitting therefrom all matters in any wise supporting any of the witnesses of the respondent and espe-
490 cially facts drawn out upon the cross examination of the informant's witnesses.

Each of these objections applies to the statements of each of the witnesses as thus summarized upon pages 3 to 220, inclusive, the same as if the testimony of each witness was specifically designated.

Forty-two. In making each one of the rulings mentioned on pages 221 and 222 under the head of "Rulings and Objections to Testimony."

Forty-three. In failing, neglecting and refusing to return a report of the rulings upon the introduction of testimony, except in the few

instances set forth upon pages 221 and 222 so that the respondent might have the advantage of excepting thereto.

Forty-four. In each ruling made in excluding testimony offered on behalf of the respondent.

Forty-five. In each ruling made in overruling objections to testimony offered on behalf of informant.

Forty-six. In holding that it was competent, relevant and material for the State to prove the acts and contentions of various representatives and the various alleged transactions which occurred prior to the incorporation of respondents: (*a*) Waters-Pierce Oil Company, (*b*) Standard Oil Company (of Indiana), (*c*) Republic Oil Company.

Forty-seven. In admitting testimony as to the alleged methods of conducting the business and of alleged combinations outside the State of Missouri—some of the many instances of such action appear in the printed testimony on pages 1019, 1321, 1327, 1328, 1357, 1517, 1519, 1652.

491 Forty-eight. In admitting evidence of acts of alleged combinations and methods of doing business, some of the many instances of such action appearing in the printed testimony at pages 49, 54, 1011, 1012.

Forty-nine. In admitting reports of the Republic Oil Company and Standard Oil Company (of Indiana) to the State of Michigan set forth in the printed testimony at pages 1032, 1055.

Fifty. In admitting as evidence each of the decisions of Supreme Courts of the United States, and Ohio and Texas Civil Court of Appeals as shown on pages 930, 1081 and at other pages of the printed testimony.

Fifty-one. In compelling the production of an officer and stock book of the Republic Oil Company under Sections 8983 and 8984 whereby the rights of respondents were violated. Section 8984 being violative of the 14th Amendment of the Constitution of the United States.

Fifty-two. Said report is not responsive to the issues made by the pleadings.

Fifty-three. Said report does not correctly state the issues made by the pleadings.

Fifty-four. Said report misapplies the law to the facts found.

Fifty-five. The legal conclusions are inconsistent with the findings of fact.

Fifty-six. Upon the findings of facts, the judgment should be for this respondent, under the issues.

492 Fifty-seven. The findings of facts are inconsistent and, taken as a whole, are so indefinite as to be unintelligible under the issues made by the pleadings.

Fifty-eight. The Commissioner erred in holding that this court had jurisdiction of this cause.

Fifty-nine. The Commissioner erred in not holding that the law under which this proceeding is conducted, is in violation of the 14th Amendment to the Constitution of the United States, in that it discriminates against corporations as between corporations and natural

persons as to punishments and mode of procedure in ascertaining the guilt of offenses under said law.

Sixty. The Commissioner erred in not finding and recommending the discharge of this defendant, under this proceeding, because it was compelled by his orders and by process of this court to introduce evidence against itself.

Sixty-one. The Commissioner failed and refused to pass upon propositions of law requested by this respondent.

Sixty-two. This respondent having been sued in its corporate name and so charged with having made an agreement with its co-respondents to fix the price and limit the quantity or output of products of petroleum, the Commissioner erred in holding the fact that the Standard Oil Company of New Jersey owned the majority of its stock, was conclusive evidence of the charge made against it in the information.

Sixty-three. The Commissioner erred in holding this re-
493 spondent should be punished by any act to which it was not a party in its corporate capacity.

Sixty-four. Under the report as an entirety, it appears that the ownership of the stock of this respondent by the Standard Oil Company of New Jersey was acquired before the law under which this proceeding is had was enacted, and that that status could not be affected by this proceeding without violating the provisions of Article 1, Section 10, of the Constitution of the United States and the fourteenth amendment thereto.

Sixty-five. Upon all the essential facts found by the Commissioner applicable to the issues, judgment should be entered for this respondent.

Sixty-six. The Master erred in accepting the statements and opinions of witness Wilhoit, as proof of facts.

Sixty-seven. The Master erred in admitting any testimony as to the organization purposes and stock ownership of the Standard Oil Company of New Jersey, or making any finding of fact as to that Company's organization or ownership of stocks, for that no averment, advising these respondents that any such an issue would be tendered, was made in the information, and this respondent was not advised by any charge or averment in the information, that it would be held responsible or charged with the illegal acts or wrongful conduct of any other person.

Sixty-eighth. The finding of the Master is misleading, wherein he says that the evidence develops the peculiar condition of the Standard Oil Company of Indiana and Waters-Pierce Oil Company buying practically all the products handled by them from
494 the Standard Oil Company or its allied interests, for that the Standard Oil Company of Indiana was a manufacturing company from whom the Waters-Pierce Oil Company bought most largely the products of petroleum, which it merchandised.

Sixty-nine. For that the report of the Master in making the following statement, is inaccurate and partial, namely: "The Republic Oil Company followed the prices of the Waters-Pierce Oil Company in its territory. Its managers were instructed to follow

those prices, therefore the only reasonable inference to draw from all the testimony on this question is that the Waters-Pierce Oil Company dictated its prices and it was understood that it should do so (2591, 2592-3, 2595)." This finding is predicated on the cross-examination of witness Heyer, and entirely ignores all other facts in respect to the manner in which the prices of oil were fixed at St Louis, contained in said cross-examination as well as the redirect examination of the witness by Mr. Johnson, which fully explains that there was no agreement as to prices, but simply an inquiry and ascertainment of such information as was publicly given, through price cards, by the Waters-Pierce Oil Company.

Seventy. The Master erred in holding that the evidence taken as a whole demonstrates the fact that the Standard Oil Company and the Waters-Pierce Oil Company fixed the prices at which the Republic Oil Company sold oils, for that the testimony demonstrates the contrary to be true. It is true that in a sense, all of the oil companies doing business in the Standard Oil Company and the Waters-Pierce Oil Company territory, did follow the pub-
495 lished card prices of those companies, which were distributed to the trade, but this is not more true of the Republic Oil Company than of any other company selling oils in the same territory, and the publication of such cards by Standard Oil Company and the Waters-Pierce Oil Company was made without conference or consultation with any other company.

Seventy-one. For that the Master erred in making any finding as to the reports of competitive shipments, the same not being in issue in this case or being in violation of its, respondents', charter or the laws of the state.

Seventy-two. For that the Master erred in his findings at law and in each and every one thereof.

Seventy-three. The Commissioner erred in finding (see pages 278, *et seq.*) that the respondents, on the 8th day of July, 1901, in the State of Missouri, created, entered into and became members of a pool, trust, agreement, confederation and understanding among themselves and each other, which pool, trust, agreement, confederation, combination and understanding created and entered into by respondents as aforesaid, continued to exist and be maintained up to the date of filing the information in this cause, and were created and entered into for the following purposes:

(*a*) To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the products of petroleum.

(*b*) To control and limit trade in the products of petroleum in the State of Missouri.

(*c*) To control, limit and prevent competition in the business of buying and selling the products of petroleum in the State
496 of Missouri, between themselves and others engaged in like business.

That said respondents, Standard Oil Company of Indiana, Waters-Pierce Oil Company and Republic Oil Company, during the above specified time, under and by virtue of said pool, trust, agreement,

confederation, combination and understanding, so created and entered into, have

(*a*) Fixed and maintained the prices of the refined products of petroleum, sold and offered for sale by them and others in the State of Missouri.

(*b*) Controlled and limited the trade in said refined products of petroleum in the State of Missouri.

"That in pursuance to said pool, trust, agreement, confederation, combination and understanding, so created and entered into by the respondents, they have controlled the prices of the refined products of petroleum, prevented competition among themselves and among themselves and others, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the state, thereby depriving the people of the state of free, full and wholesome competition in the sale of the refined products of petroleum, and have, under and in pursuance of said pool, trust, agreement, confederation, combination and understanding, so created, entered into and maintained, deceived and misled the public into the belief that they were separate and distinct corporations pursuing an independent business."

For that said finding is a mere expression of opinion, without the statement of either fact or law to support it; for that no
497 such issue is charged in or made by the information; for that said finding fails to disclose what, in the opinion of the Commissioner, is or was the pool, agreement, confederation, combination or the understanding, and how and when they were created or formed, and who created and formed them, or whether they were created and formed by anyone authorized so to do. For that said opinion of the Commissioner is not supported by the weight of the evidence, nor justified by the law applicable to the case, nor responsive to the issues made by the pleadings.

Seventy-four. For that the statute under which this proceeding is instituted and by virtue of which the forfeiture of respondent's charter is sought, is so indefinite and uncertain in its terms as that respondent could not know in advance of the finding of this court, whether it had committed the offense alleged against it in this cause, and for that reason it cannot be made the basis of a penalty against this respondent, without violating the provisions of the Constitution of this state and of the United States.

Seventy-five. This respondent further prays the benefit of each and every exception of its co-respondents filed herein to the said report of the Commissioner, as fully as if set forth in this, its exceptions.

FRANK HAGERMAN.
ALFRED D. EDDY.
Counsel for Respondent Standard Oil Company.

498 In the Supreme Court of Missouri, Court en Banc, April Term, 1907.

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informaant,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY AND Republic Oil Company, Corporations, Respondents.

Exceptions of Republic Oil Company to Report and Findings of Robert A. Anthony, Commissioner.

Now comes the said respondent and respectfully says that the Commissioner erred in each of the respects hereinafter set forth, each of which specifications, and each subdivision thereof, is presented as a separate and distinct exception to said report and findings.

In each of the instances where such exception is taken to any portion of the report which states a legal conclusion, the report is, in such respect, contrary to the law, and where any portion thereof purports to state a matter of fact, it is contrary to the evidence and to the weight thereof, and is wholly unsupported thereby.

499 Thereupon this respondent respectfully shows that the said Commissioner erred in each of the following matters:

One. In failing to return as part of his report, so that exceptions to his actions thereon might be filed, each request for a separate finding of fact, which the report at page 273 shows to have been made by the recital:

"Each respondent separately asks the Commissioner to make as a separate finding of fact each division and subdivision of the statement submitted with the brief of the Republic Oil Company and Standard Oil Company of Indiana."

Two. In failing to give each of the requests for findings of facts so set forth in the brief before the Commissioner, numbered respectively I to XIX, inclusive. (Each refusal of each request is hereby separately excepted to.)

Three. In refusing to give each of the requests for declarations of law set forth in the report at pages 273 to 277, inclusive. (Each refusal of each request is hereby separately excepted to.)

Four. In refusing to directly pass upon and return with his report as distinct rulings his action upon each of the said requests for declarations of law instead of reciting as is done on page 277:

"The views taken by the Commissioner under the next subhead which follows will answer all the propositions of the law raised in the foregoing declarations."

Five. In failing to separately and distinctly report the
500 facts found and the conclusions of law based thereon instead of returning a partial and unfair summary of the evidence, and general mixed conclusions of law and fact with no indication of the basis for their adoption.

Six. In holding that there was jurisdiction in this proceeding by

prohibition to directly enforce the provisions of each of Sections 8965, 8966, 8967, 8971, 8972 and 8978.

Seven. In refusing to recognize the contention of respondent that Section 8965 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions in the 14th Amendment to the Constitution of the United States, as particularly set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Eight. In refusing to recognize the contention of respondent that Section 8966 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions of the 14th Amendment to the Constitution of the United States, as particularly set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Nine. In refusing to recognize the contention of respondent that Section 8971 of the Revised Statutes of 1899 was unconstitutional, and in assuming its constitutionality, whereas it was contrary
501 to the provisions of the 14th Amendment to the Constitution of the United States, as set forth in the second amended answers of the Standard Oil Company of Indiana, and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Ten. In refusing to recognize the contention of respondent that Section 8972 of the Revised Statutes of 1899, was unconstitutional, and in assuming its constitutionality, whereas it was contrary to the provisions of the 14th Amendment to the Constitution of the United States, as set forth in the second amended answers of the Standard Oil Company of Indiana and the Republic Oil Company, filed February 11, 1906, to which reference is hereby made.

Eleven. In making that portion of the report set forth upon pages 278 to 285, inclusive, under the heading of "The Issues."

Twelve. In making each of the statements upon page 280 reading:

(*a*) "The language of the information, both in substance and words, embraces combinations formed to regulate, fix and control the prices to be paid by retail dealers and others in the state for the products of petroleum, and to control and limit the trade in such products as interdicted by Section 8965 of Article 1, and Section 8978 of Article 2, Chapter 143, Revised Statutes of 1899."

(*b*) In making each of the statements upon page 280 reading: "Also the language of the information is broad enough to embrace combinations formed for the purpose, or made with the view to lessen, or which tend to lessen, competition in the sale of petroleum, as prohibited by Section 8966 of said Chapter 143."

502 Thirteen. In making each statement in that portion of so much of the report as begins upon next to the last line upon page 280 with the words, "It is contended," and ending with the word "proven" upon line 7 on page 284.

In making each of the statements upon page 284:

(*a*) "It is very clear that the information is sufficient."

(*b*) "It is urged that the provisions of Chapter 143, Revised Statutes of 1899, are in conflict with the first section of the 14th Amendment to the Federal Constitution and other constitutional provisions. So far as the Commissioner is concerned all these constitutional objections are disposed of by the following cases:

State Ex Inf. v. Standard Oil Co., 194 Mo., 124.
State Ex Inf. v. Firemen's Fund Ins. Co., 152 Mo., 1.
State Ex Inf. v. Armour Packing Co., 173 Mo., 356.
State Ex Inf. v. Continental Tobacco Co., 177 Mo., 13.
Finck v. Granite Co., 187 Mo., 244."

Fifteen. In making each of the statements found in each paragraph under the heading "Conclusions Upon the Facts," as set forth upon pages 285 to 301 inclusive.

Sixteen. In holding, upon page 288, that the ownership of a majority of stock of the three respondents, suppressed competition, destroyed their diversity of interest and motive for competition, and carried with it control of the corporation.

Seventeen. In making each one of the statements upon page 289 reading:

503 (*a*) "The Standard Oil Company of New Jersey, through the individuals at 26 Broadway, who held for it a large majority of the stock, of all the respondents, had control by virtue of such ownership and did control."

(*b*) "Even if Mr. Pierce did vote the stock of the New Jersey Company, elect the directors and control the Waters-Pierce Oil Company from May, 1900, to February, 1904, no more can be said than that he was acting as the agent of the corporation and carrying out the will and wishes of the majority stockholder. That the New Jersey Company had the power to control and that Pierce's authority was merely permissive, or that of an agent whose agency was subject to revocation at any time, was demonstrated in 1904, when his agency was revoked without consultation with him, and he was told by the general counsel of the company that the action was regular."

(*c*) "The conclusion cannot be escaped that the common ownership of the stock of respondents by an outside corporation is a strong circumstance tending to show them guilty of an agreement, combination or conspiracy to effect the objects stated in the information."

Eighteen. In making:

(*a*) "Each of the statements, beginning with the words: 'There was a division' in line 1, page 290, and ending with the words 'to the other,' on line 11, page 291."

(*b*) Each statement beginning upon pages 290 and ending on line 1, page 291, reading:

"Nor was the Waters-Pierce Oil Company a marketer of the brands of oil of the Standard Oil Company of Indiana. It posed to the public as a marketer of its own special brands of oil, manufactured, it is true, for it by the Standard Oil Company and
504 its allied interests. So far as the public knew the 'Eocene' of the Standard and 'Eupion' of the Waters-Pierce were

entirely different oils, although as a matter of fact they may have been the same."

Nineteen. In making:

(*a*) Each statement beginning with the words, "The reserved dominating power," on line 12, page 291, and ending with the word "Broadway" on line 24, page 292.

(*b*) Each statement beginning with the words "The Republic Oil Company" on line 25, page 292, and ending with the words "common oils" on line 9, page 294.

(*c*) Each statement beginning with the words "Another significant fact" on line 10, and ending with the words "Oil Company" on line 19, page 294.

(*d*) Each statement beginning with the words "All the dividends" on line 20, page 294, and ending with the words "Shares owned by him" on line 4, page 295.

(*e*) Each statement beginning with the words "Another strong circumstance," line 5, and ending with the words "subsidiary to it," line 21, page 295.

(*f*) Each statement beginning with the words "Again the system," line 22, and ending with the words "products of petroleum," line 29, page 295.

Twenty. In saying on page 293:

"That the class of oils handled by the Waters-Pierce Oil Company and Standard Oil Company, who bought the Republic Oil Company, were invariably sold at prices fixed by one or the other of the respondents."

Twenty-one. In saying on page 294:

"If the Republic Oil Company had been a real independ-
505 ent company it would not have dismantled the two refineries purchased at the time of the sale of Schofield, Shurmer & Teagle to the Standard Oil Company."

Twenty-two. In making the statements upon pages 296 and 297 reading:

"While it is true that there was no competition between the respondents, Waters-Pierce Oil Company and Standard Oil Company, nor even apparent competition, yet they did pose as separate and independent companies, while each was striving to enrich a common treasury, and by an indefinite agreement as to time divided trade territory and did not compete."

Twenty-three. In making each statement beginning with the words "the evidence shows," page 298, line 6, and ending with the words "of Missouri," upon line 21, page 299.

Twenty-four. In each separate finding upon pages 299 and 300 that respondent was with its co-respondents a party to a pool, trust, agreement, confederation, combination and understanding."

(*a*) "To regulate, fix and control the prices to be paid by retail dealers and others in the state of Missouri for the products of petroleum."

(*b*) "To control and limit trade in the products of petroleum in the state of Missouri."

(*c*) "To control, limit and prevent competition in the business

of buying and selling the products of petroleum in the state of Missouri, between themselves and others engaged in like business."

Twenty-five. In each separate finding on page 300, that respondent with its co-respondents:

506 (*a*) "Fixed and maintained the prices of refined products of petroleum, sold and offered for sale by them and others in the state of Missouri."

(*b*) "Controlled and limited the trade in said refined products of petroleum in the state of Missouri."

(*c*) "Controlled the prices of the refined products of petroleum, prevented competition among themselves and among themselves and others therein, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the State, thereby depriving the people of the state of free, full and wholesome competition in the sale of the refined products of petroleum."

(*d*) "Deceived and misled the public into the belief that they were separate and distinct corporations pursuing an independent business."

Twenty-six. In making each statement in each paragraph of the report found upon pages 224 to 229, inclusive, under the head of "Waters-Pierce Oil Company."

Twenty-seven. In making each statement in each paragraph of the report found on pages 229 to 232, inclusive, under the head of "Republic Oil Company."

Twenty-eight. In making each statement in each paragraph of the report found on pages 232 to 234, inclusive, under the head of "Standard Oil Company (of Indiana)."

Twenty-nine. In making each statement in each para-
507 graph of the report found on pages 234 to 236, inclusive, under the head "Standard Oil Company of New Jersey."

Thirty. In making each statement found in each paragraph of the report on page 336 under the head of "Grades and Brands of Oils."

Thirty-one. In making each of the statements in each of the paragraphs upon pages 236 to 238, inclusive, under the head "Standard Oil Company did not sell to Independents."

Thirty-two. In making each of the statements found on pages 238 and 239 under the head of "Territorial division in Missouri."

Thirty-three. In making each of the statements found in each paragraph of the report on pages 239 to 243, inclusive, under the head of "Prices of Oil, How Fixed."

Thirty-four. In making each of the statements found on pages 243 to 244 under the head of "Reports of Competitive Shipments."

Thirty-five. In making each of the statements in each of the paragraphs on pages 244 to 245, inclusive, under the head of "Percentage of Business."

Thirty-six. In making each statement in each paragraph of pages 246 to 255 inclusive, under the head of "Competition Between Respondents and Others."

Thirty-seven. In making each statement in each paragraph on pages 255 to 272, inclusive, under the head of "Community of Interests Between Respondents."

Thirty-eight. In making each of the statements on page 237.

508 (*a*) "There is considerable evidence going to show that at times independent dealers tried to buy from Standard Oil interests, but could not do so."

(*b*) "Stoeke, of the St. Louis Oil Company back in 1893 says he tried to buy of the Standard Oil Company at East St. Louis, but its agent refused to sell him (59, 56, 84, 62, 146, 324, 381, 460.)"

Not only does the testimony not warrant any such statement, but it is directly in conflict with that made upon page 295, reading:

"While there is testimony to the effect that the Standard Oil Company, as a refiner and wholesaler, would sell to any person who wanted to buy and pay their prices, yet the fact has been proven that it sold almost exclusively to companies allied and subsidiary to it."

This latter statement should have been in the form of a direct finding based upon the undisputed evidence; at least upon the overwhelming weight thereof.

Thirty-nine. In making each of the following statements upon pages 241 and 242 respectively:

(*a*) "The Republic Oil Company followed the prices of Waters-Pierce Oil Company in its territory. Its managers were instructed to follow these prices, therefore the only reasonable inference to draw from all the testimony on this question is that the Waters-Pierce Oil Company dictated its prices and that it was understood that it should do so. (2591, 2592-3, 2595.) There was no authority in St. Louis for making prices for the Republic except the Waters-Pierce market (2604, 1097)."

(*b*) "When Andrew M. Finlay was vice-president of
509 Waters-Pierce Oil Company, Maywood Maxon says Finlay told him that he (Finlay) fixed prices at which Republic Oil Company sold oils (192). While Mr. Finlay and other officers of the Waters-Pierce deny this statement was made, yet, notwithstanding the fact that the statement may not have been made, the evidence taken as a whole demonstrates that the facts embodied in the statement were true."

(*c*) "As to the respondent, Standard Oil Company, the conditions as to fixing prices in this territory were almost exactly the same as those in Waters-Pierce territory, except that in Standard territory it occupied the commanding position and fixed and maintained prices for itself and all other oil dealers."

(*d*) "The Manager of the Standard Oil Company at Kansas City regularly fixed the prices for Republic Oil Company, which were obtained by the manager of the Republic at any time, and he was always notified of a decline or increase (589 et seq., 622, 2661, 2662)."

Forty. In the statement made on page 243 reading:

"All witnesses for respondents claim there was no agreement or

understanding between any of the respondents to fix and maintain prices."

Whereas, such statements should have been in the form of finding of ultimate fact as it was sustained by the undisputed testimony; in any event, by the overwhelming weight thereof.

Forty-one. In summarizing in a partial and incomplete form, the testimony of witnesses and reporting a summary thereof, misleading in its nature, and omitting therefrom all matters in any wise supporting any of the witnesses of the respondent and
510 especially facts drawn out upon the cross examination of the informant's witnesses.

Each of these objections applies to the statements of each of the witnesses as thus summarized upon pages 3 to 220, inclusive, the same as if the testimony of each witness was specifically designated.

Forty-two. In making each one of the rulings mentioned on pages 221 and 222 under the head of "Rulings and Objections to Testimony."

Forty-three. In failing, neglecting and refusing to return a report of the rulings upon the introduction of testimony except in the few instances set forth upon pages 221 and 222 so that the respondent might have the advantage of excepting thereto.

Forty-four. In each ruling made in excluding testimony offered on behalf of the respondent.

Forty-five. In each ruling made in overruling objections to testimony offered on behalf of informant.

Forty-six. In holding that it was competent, relevant and material for the State to prove the acts and contentions of various representatives and the various alleged transactions which occurred prior to the incorporation of respondents: (*a*) Waters-Pierce Oil Company, (*b*) Standard Oil Company (of Indiana), (*c*) Republic Oil Company.

Forty-seven. In admitting testimony as to the alleged methods of conducting the business and of alleged combinations outside the State of Missouri—some of the many instances of such action appear in the printed testimony on pages 1019, 1321, 1327, 1328, 1357, 1517, 1519, 1652.

511 Forty-eight. In admitting evidence of acts of alleged combinations and methods of doing business, some of the many instances of such action appearing in the printed testimony at pages 49, 54, 1011, 1012.

Forty-nine. In admitting reports of the Republic Oil Company and Standard Oil Company (of Indiana) to the State of Michigan set forth in the printed testimony at pages 1032, 1055.

Fifty. In admitting as evidence each of the decisions of Supreme Courts of the United States, and Ohio and Texas Civil Court of Appeals as shown on pages 930, 1081 and at other pages of the printed testimony.

Fifty-one. In compelling the production of an officer and stock book of the Republic Oil Company under Sections 8983 and 8984 whereby the rights of respondents were violated. Section 8984 be-

ing violative of the 14th Amendment of the Constitution of the United States.

Fifty-two. Said report is not responsive to the issues made by the pleadings.

Fifty-three. Said report does not correctly state the issues made by the pleadings.

Fifty-four. Said report misapplies the law to the facts found.

Fifty-five. The legal conclusions are inconsistent with the findings of fact.

Fifty-six. Upon the findings of facts, the judgment should be for this respondent, under the issues.

512 Fifty-seven. The findings of facts are inconsistent and, taken as a whole, are so indefinite as to be unintelligible under the issues made by the pleadings.

Fifty-eight. The Commissioner erred in holding that this court had jurisdiction of this cause.

Fifty-nine. The Commissioner erred in not holding that the law under which this proceeding is conducted, is in violation of the 14th Amendment to the Constitution of the United States, in that it discriminates against corporations as between corporations and natural persons as to punishments and mode of procedure in ascertaining the guilt of offenses under said law.

Sixty. The Commissioner erred in not finding and recommending the discharge of this defendant, under this proceeding, because it was compelled by his orders and by process of this court to introduce evidence against itself.

Sixty-one. The Commissioner failed and refused to pass upon propositions of law requested by this respondent.

Sixty-two. This respondent having been sued in its corporate name and so charged with having made an agreement with its co-respondents to fix the price and limit the quantity or output of products of petroleum, the Commissioner erred in holding the fact that the Standard Oil Company of New Jersey owned the majority of its stock, was conclusive evidence of the charge made against it in the information.

513 Sixty-three. The Commissioner erred in holding this respondent should be punished by any act to which it was not a party in its corporate capacity.

Sixty-four. Under the report as an entirety, it appears that the ownership of the stock of this respondent by the Standard Oil Company of New Jersey was acquired before the law under which this proceeding is had was enacted, and that that status could not be affected by this proceeding without violating the provisions of Article 1, Section 10, of the Constitution of the United States and the fourteenth amendment thereto.

Sixty-five. Upon all the essential facts found by the Commissioner applicable to the issues, judgment should be entered for this respondent.

Sixty-six. The Master erred in accepting the statements and opinions of witness Wilhoit, as proof of facts.

Sixty-seven. The Master erred in admitting any testimony as to

the organization purposes and stock ownership of the Standard Oil Company of New Jersey, or making any finding of fact as to that Company's organization or ownership of stocks, for that no averment, advising these respondents that any such an issue would be tendered, was made in the information, and this respondent was not advised by any charge or averment in the information, that it would be held responsible or charged with the illegal acts or wrongful conduct of any other person.

Sixty-eight. The finding of the Master is misleading, wherein he says that the evidence develops the peculiar condition of the Standard Oil Company of Indiana and Waters-Pierce Oil Company buying practically all the products handled by them from
514 the Standard Oil Company or its allied interests, for that the Standard Oil Company of Indiana was a manufacturing company from whom the Waters-Pierce Oil Company bought most largely the products of petroleum, which it merchandised.

Sixty-nine. For that the report of the Master in making the following statement, is inaccurate and partial, namely: "The Republic Oil Company followed the prices of the Waters-Pierce Oil Company in its territory. Its managers were instructed to follow those prices, therefore the only reasonable inference to draw from all the testimony on this question is that the Waters-Pierce Oil Company dictated its prices and it was understood that it should do so (2591, 2592-3, 2595)." This finding is predicated on the cross-examination of witness Heyer, and entirely ignores all other facts in respect to the manner in which the prices of oil were fixed at St. Louis, contained in said cross-examination as well as the redirect examination of the witness by Mr. Johnson, which fully explains that there was no agreement as to prices, but simply an inquiry and ascertainment of such information as was publicly given, through price cards, by the Waters-Pierce Oil Company.

Seventy. The Master erred in holding that the evidence taken as a whole demonstrates the fact that the Standard Oil Company and the Waters-Pierce Oil Company fixed the prices at which the Republic Oil Company sold oils, for that the testimony demonstrates the contrary to be true. It is true that in a sense, all of the oil companies doing business in the Standard Oil Company and the Waters-Pierce Oil Company territory, did follow the published card
515 prices of those companies, which were distributed to the trade, but this is not more true of the Republic Oil Company than of any other company selling oils in the same territory, and the publication of such cards by Standard Oil Company and the Waters-Pierce Oil Company was made without conference or consultation with any other company.

Seventy-one. For that the Master erred in making any finding as to the reports of competitive shipments, the same not being in issue in this case or being in violation of its, respondent's, charter or the laws of the state.

Seventy-two. For that the Master erred in his findings at law and in each and every one thereof.

Seventy-three. The Commissioner erred in finding (see pages

278, *et seq.*) that the respondents, on the 8th day of July, 1901, in the State of Missouri, created, entered into and became members of a pool, trust, agreement, confederation and understanding among themselves and each other, which pool, trust, agreement, confederation, combination and understanding created and entered into by respondents as aforesaid, continued to exist and be maintained up to the date of filing the information in this cause, and were created and entered into for the following purposes:

(*a*) To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the products of petroleum.

(*b*) To control and limit trade in the products of petroleum in the State of Missouri.

(*c*) To control, limit and prevent competition in the busi-
516 ness of buying and selling the products of petroleum in the State of Missouri, between themselves and others engaged in like business.

That said respondents, Standard Oil Company of Indiana, Waters-Pierce Oil Company and Republic Oil Company, during the above specified time, under and by virtue of said pool, trust, agreement, confederation, combination and understanding, so created and entered into, have

(*a*) Fixed and maintained the prices of the refined products of petroleum, sold and offered for sale by them and others in the State of Missouri.

(*b*) Controlled and limited the trade in said refined products of petroleum in the State of Missouri.

"That in pursuance to said pool, trust, agreement, confederation, combination and understanding, so created and entered into by the respondents, they have controlled the prices of the refined products of petroleum, prevented competition among themselves and among themselves and others, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the state, thereby depriving the people of the state of free, full and wholesome competition in the sale of the refined products of petroleum, and have, under and in pursuance of said pool, trust, agreement, confederation, combination and understanding, so created, entered into and maintained, deceived and misled the public into the belief that they were separate and distinct corporations pursuing an independent business."

For that said finding is a mere expression of opinion,
517 without the statement of either fact or law to support it; for that no such issue is charged in or made by the information; for that said finding fails to disclose what, in the opinion of the Commissioner, is or was the pool, agreement, confederation, combination or the understanding, and how and when they were created or formed, and who created and formed them, or whether they were created and formed by anyone authorized so to do. For that said opinion of the Commissioner is not supported by the weight of

the evidence, nor justified by the law applicable to the case, nor responsive to the issues made by the pleadings.

Seventy-four. For that the statute under which this proceeding is instituted and by virtue of which the forfeiture of respondent's charter is sought, is so indefinite and uncertain in its terms as that respondent could not know in advance of the finding of this court, whether it had committed the offense alleged against it in this cause, and for that reason it cannot be made the basis of a penalty against this respondent, without violating the provisions of the Contitution of this state and of the United States.

Seventy-five. This respondent further prays the benefit of each and every exception of its co-respondents filed herein to the said report of the Commissioner, as fully as if set forth in this, its exceptions.

ALFRED D. EDDY,
FRANK HAGERMAN,
Counsel for Respondent Republic Oil Company.

518 And afterwards, to-wit, on the 8th day of June, 1907, the further following proceedings were had in said cause, viz:

STATE ex Inf. Atty. Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Comes now the Waters Pierce Oil Company, one of the respondents herein, by attorney, and files its exceptions to the report of Robert A. Anthony, Commissioner herein, comes also Herbert S. Hadley, Attorney General, and files his motion to set down for argument and hearing, the exceptions to the report of the commissioner herein.

Which said Exceptions of Waters Pierce Oil Company are in the words and figures as follows, to-wit:

519 In the Supreme Court of Missouri, Court en Banc, April Term, 1907.

No. 12,988.

STATE OF MISSOURI, ex Inf. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Exceptions of Respondent, Waters-Pierce Oil Company, to Report of Commissioner.

Comes now the Waters-Pierce Oil Company and excepts to the report of the commissioner in the above cause, for that—

First. Said report is not responsive to the issues made by the pleadings.

Second. Said report does not correctly state the issues made by the pleadings.

Third. Said report misapplies the law to the facts found.

Fourth. The legal conclusions are inconsistent with the findings of fact.

520 Fifth. Upon the findings of facts, the judgment should be for this respondent, under the issues.

Sixth. The findings of facts are inconsistent and, taken as a whole, are so indefinite as to be unintelligible under the issues made by the pleadings.

Seventh. The Commissioner erred in holding that this court had jurisdiction of this cause.

Eighth. The Commissioner erred in not holding that the law under which this proceedings is conducted, is in violation of the 14th amendment to the Constitution of the United States, in that it discriminates against corporations as between corporations and natural persons as to punishments and mode of procedure in ascertaining the guilt of offenses under said law.

Ninth. The Commissioner erred in not finding and recommending the discharge of this defendant, under this proceedings, because it was compelled by his orders and by process of this court to introduce evidence against itself.

Tenth. The Commissioner failed and refused to pass upon propositions of law requested by this respondent.

Eleventh. This respondent having been sued in its corporate name and so charged with having made an agreement with its co-respondents to fix the price and limit the quantity or output of products of petroleum, the Commissioner erred in holding the fact that the Standard Oil Company of New Jersey owned the majority of its stock, was conclusive evidence of the charge made against it in the information, especially inasmuch as the Commissioner further shows that Mr. Pierce, the minority shareholder, at all times managed and controlled the business of this respondent, and the officers of respondent at St. Louis always fixed the prices of

521 the products which it sold, independently of the interference of the Standard Oil Company of New Jersey.

Twelfth. The Commissioner erred in holding this respondent should be punished by any act to which it was not a party in its corporate capacity, and because of the mere status of the ownership of practically two-thirds of its shares of stock.

Thirteenth. Under the report as an entirety, it appears that the ownership of the stock of this respondent by the Standard Oil Company of New Jersey was acquired before the law under which this proceeding is had was enacted, and that that status could not be affected by this proceeding without violating the provisions of Article 1, Section 10, of the Constitution of the United States and the 14th amendment thereto, and for like reasons by this proceeding the minority shareholders could not be deprived of their interest in respondent, because they were powerless to prevent or overcome the status so established.

Fourteenth. Upon all the essential facts found by the Commissioner applicable to the issues, judgment should be entered for this respondent.

Fifteenth. The Master failed to find the uncontradicted fact that the officers of the Waters-Pierce Oil Company managing its affairs, as found by him in his said report, did not know that the stock of the Republic Oil Company was owned or held for or by the Standard Oil Company of New Jersey.

Sixteenth. Whereas, the Master expresses an opinion that from the time of the organization of the Waters-Pierce Oil Company, in 1878, to 1900, the persons representing Standard Oil interests and holding stock, either as a member of the Trustees of the Standard Oil Company or of the Standard Oil Company of New Jersey,
522 were members of the Board of Directors of the Waters-Pierce Oil Company and took part in its management, yet he does not show that such members were non-residents of the State of Missouri, had no office at the general offices of the Waters-Pierce Oil Company and took no active part in the management of the affairs of the Waters-Pierce Oil Company, or what part they did take in such matter.

Seventeenth. The Master erred in stating that it is conceded by counsel for informant and respondents that the Waters-Pierce Oil Company, under its articles of incorporation, had the power to produce and refine petroleum, as well as to deal in and market its products.

Eighteenth. The Master erred in making any finding as to the International Oil Works, because it is not charged that the respondent, the Waters-Pierce Oil Company, had any contract, combination or understanding with that company, but the Master should have found, if said finding was at all material, that Grenner acted only as an employe or broker for the Waters-Pierce Oil Company, doing business in the name of the International Oil Works, which was a mere arbitrary trade designation.

Nineteenth. The Master erred in accepting the statements and opinions of witness Wilhoit, as proof of facts.

Twentieth. The Master erred in admitting any testimony as to the organization purposes and stock ownership of the Standard Oil Company of New Jersey, or making any finding of fact as to that company's organization or ownership of stocks, for that no averment, advising these respondents that any such an issue would be tendered, was made in the information, and this respondent was not advised by any charge or averment in the information, that it would be held responsible or charged with the illegal acts or wrongful conduct of any other person.

523 Twenty-first. The finding of the Master is misleading, wherein he says that the evidence develops the peculiar condition of the Standard Oil Company of Indiana and Waters-Pierce Oil Company buying practically all the products handled by them from the Standard Oil Company or its allied interests, for that the Standard Oil Company of Indiana was a manufacturing company from

whom the Waters-Pierce Oil Company bought most largely the products of petroleum, which it merchandised.

Twenty-second. For that the Report of the Master in making the following statement, is inaccurate and partial, namely: "The Republic Oil Company followed the prices of the Waters-Pierce Oil Company in its territory. Its managers were instructed to follow those prices; therefore, the only reasonable inference to draw from all the testimony on this question is that the Waters-Pierce Oil Company dictated its prices and it was understood that it should do so. (2591, 2592-3, 2595.)" This finding is predicated on the cross-examination of witness Hyer, and entirely ignores all other facts in respect to the manner in which the prices of oil were fixed at St. Louis, contained in said cross-examination as well as the re-direct examination of the witness by Mr. Johnson, which fully explains that there was no agreement as to prices, but simply an inquiry and ascertainment of such information as was publicly given, through price cards, by the Waters-Pierce Oil Company.

Twenty-third. The Master erred in holding that the evidence taken as a whole demonstrates the fact that the Waters-Pierce Oil Company fixed the prices at which the Republic Oil Company sold oils, for that the testimony demonstrates the contrary to be true. It is true that in a sense, all of the oil companies doing business in the Waters-Pierce Oil Company territory, did follow the pub-
524 lished card prices of the Waters-Pierce Oil Company, which were distributed to the trade, but this is not more true of the Republic Oil Company than of any other company selling oils in the same territory, and the publication of such cards by the Waters-Pierce Oil Company was made without conference or consultation with any other company.

Twenty-fourth. For that the Master erred in making any finding as to the reports of competitive shipments, the same not being in issue in this case or being in violation of its charter or the laws of the State.

Twenty-fifth. For that the Master erred in not finding the fact to be that the Waters-Pierce Oil Company owned and rented its own tank cars.

Twenty-sixth. For that the Master erred in his findings at law and in each and every one thereof.

Twenty-seventh. The Commissioner erred in finding that the respondents, on the 8th day of July, 1901, in the State of Missouri, created, entered into and became members of a pool, trust, agreement, confederation and understanding among themselves and each other, which pool, trust, agreement, confederation, combination and understanding created and entered into by respondents, as aforesaid, continued to exist and be maintained up to the date of filing the information in this cause, and were created and entered into for the following purposes:

(1) To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the products of petroleum.

(2) To control and limit trade in the products of petroleum in the State of Missouri.

(3) To control, limit and prevent competition in the business of buying and selling the products of petroleum in the State of
525 Missouri, between themselves and others engaged in like business.

That said respondents, Standard Oil Company of Indiana, Waters-Pierce Oil Company and Republic Oil Company, during the above specified time, under and by virtue of said pool, trust, agreement, confederation, combination and understanding, so created and entered into, have—

(1) Fixed and maintained the prices of the refined products of petroleum, sold and offered for sale by them and others in the State of Missouri.

(2) Controlled and limited the trade in said refined products of petroleum in the State of Missouri.

That in pursuance of said pool, trust, agreement, confederation, combination and understanding, so created and entered into by the respondents, they have controlled the prices of the refined products of petroleum, prevented competition among themselves and among themselves and others, secured control of the principal part of the refined products of petroleum in the State of Missouri and of the purchase and sale of such oils, limited the trade therein, have driven competition out of the State, thereby depriving the people of the State of free, full and wholesome competition in the sale of the refined products of petroleum, and have, under and in pursuance of said pool, trust, agreement, confederation, combination and understanding, so created, entered into and maintained, deceived and misled the public into the belief that they were separate and distinct corporations pursuing an independent business.

For that said finding is a mere expression of opinion, without the statement of either fact or law to support it; for that no such issue is charged in or made by the information; for that said finding fails to disclose what, in the opinion of the Commissioner, is or
526 was the pool, agreement, confederation, combination or the understanding, and how and when they were created or formed, and who created and formed them, or whether they were created and formed by anyone authorized so to do. For that said opinion of the Commissioner is not supported by the weight of the evidence, nor justified by the law applicable to the case, nor responsive to the issues made by the pleadings.

Twenty-eighth. For that by the statute under which this proceeding is instituted and by virtue of which the forfeiture of respondent's charter is sought, is so indefinite and uncertain in its terms as that respondent could not know in advance of the finding of this court, whether it had committed the offense alleged against it in this cause, and for that reason it cannot be made the basis of a penalty against this respondent, without violating the provisions of the Constitution of this State and of the United States.

Twenty-ninth. This respondent further prays the benefit of each and every exception of its co-respondents filed herein to the said

report of the Commissioner, as fully as if set forth in this, its Exceptions.

Thirtieth. The Commissioner erred in admitting incompetent, irrelevant and hearsay testimony, offered upon the part of the State, and refused to admit competent, relevant and proper testimony on the part of this defendant.

JOHN D. JOHNSON,
CHARLES NAGEL,
HENRY S. PRIEST,
For Waters-Pierce Oil Company.

527 Which said motion of the Attorney General to set down for argument is in the words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court en Banc, April Term, 1907.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Motion to Set Down for Argument and Hearing.

Comes now Herbert S. Hadley, Attorney General of the State of Missouri, who in this behalf appears and prosecutes for the State, and shows to the Court that heretofore, towit: upon the 24th day of May, 1907, the Honorable Robert A. Anthony, Commissioner in the above entitled cause, appointed by this Court to hear the testimony therein and to submit to this Court his findings and conclusions of fact and of law, filed in the office of the clerk of this Court a complete abstract of the testimony in said case and his findings and conclusions upon the issues of fact and of law joined therein: that heretofore, to-wit: upon the 7th day of June, 1907, the said respondents herein, the Standard Oil Company, Waters-Pierce Oil Company and Republic Oil Company, by their respective counsel, filed exceptions to the findings and conclusions of fact and of law made by said Commissioner in his said report.

Wherefore, said Attorney General moves the Court to set down for hearing and argument the exceptions of said respondents to the findings and conclusions of fact and of law made by said Commissioner at as early a date as is consistent with the convenience and the work of the Court.

HERBERT S. HADLEY,
Attorney General.

528 And afterwards, to-wit, on the 15th day of October, 1907, the further following proceedings were had in said cause, viz

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Comes now the Republic Oil Company by attorney, and files its withdrawal from the State of Missouri.

Which said withdrawal is in words and figures as follows, to-wit:

I, John E. Swanger, Secretary of State, do hereby certify that the original affidavit of withdrawal of the Republic Oil Company, of which the attached is a copy, was presented to me and left at my office by Frank Hagerman, the attorney of said company, upon June 11th, 1907, with the request that the same be filed in my office, and the only reason that the same was not then actually filed was that I desired the advice of the Attorney General as to whether in view of the pending litigation it should be permitted to be filed.

Witness my hand and seal this 22nd day of July, 1907.

JNO. E. SWANGER,
Secretary of State.

Whereas heretofore, towit on the 8th day of July A. D. 1901, the Republic Oil Company, being a corporation organized and existing under the laws of the State of New York, did file in the office of the Secretary of State, of the State of Missouri, authenticated evidence of its incorporation and in all respects complied with the requirements of the law of said State governing foreign private cor-
529 porations, and designated an agent or representative in said State on whom service of process against said corporation could be made, and

Whereas the said Republic Oil Company has disposed of all of its property and business interests in said State and ceased doing business therein,

Now therefore the said Republic Oil Company does hereby abolish any and all offices or places of business it may have in said State and does hereby revoke and cancel the authority of its present agent, H. C. Cornforth, of Kansas City, in said State, and does hereby withdraw itself from the State of Missouri.

In witness whereof the said Republic Oil Company does hereby, by its proper officers, cause its name to be signed and its corporate seal to be attached at the City of New York, State of New York, this 3rd day of June, A. D. 1906.

REPUBLIC OIL COMPANY.
[CORPORATE SEAL.] By C. L. NICHOLS, *President.*

Attest:
CHARLES T. WHITE,
Ass't Secretary.

STATE OF NEW YORK,
County of New York, ss:

On the 3rd day of June, A. D. 1907, before me personally came C. L. Nichols to me known, who being by me duly sworn did depose

and say that he is the President of the Republic Oil Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that he signed his name to the same for said corporation, and that all of the statements contained in said instrument are true.

530 A. T. DOREMUS,
[L. S.] *Notary Public, Richmond County.*

Certificate filed in New York County.

And afterwards, to-wit, on the 23rd day of October, 1907, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen., Inf.,
v.
STANDARD OIL CO. et al., Resp.

Come now the said parties by attorneys, and after arguments herein, submit this cause to the court.

And afterwards, to-wit, on the 23rd day of December, 1908, the further following proceedings were had in said cause, viz:

STATE OF MISSOURI ex Informatione HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY, WATERS PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

531 And now on this day, this court having fully considered the evidence in this cause, and announced and filed its opinion that the said respondents and each of them are guilty as charged in the information of the Attorney General of a violation of the statute of this state, entitled, "Pools, Trusts and Conspiracies; Unlawful combinations, approved March *March* 24th, 1877, and an Act of the General Assembly of this state, approved April 2nd, 1891 and entitled, "An Act providing for the punishment of pools, trusts and conspiracies to control prices and as to evidence and prosecution in such cases," and now known as Chapter 143 of the Revised Statutes of Missouri, 1899, come now the State of Missouri, by Herbert S. Hadley, the Attorney General and the said respondents by their respective counsel, and it is now here considered, ordered and adjudged by the Court that the said respondents and each of them are guilty of violating the said Acts of the General Assembly of this State, in that at the dates and times set forth in the information of the Attorney General, they did form and enter into a pool, trust, combination and conspiracy, to regulate fix and control the prices to be paid by retail dealers and others in the State of Missouri, for naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum and to control and limit the trade

in the articles aforesaid and to prevent competition in said business of buying and selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum, in this state, between themselves and others engaged in like business and to deceive and mislead the public, and did control, fix and maintain the prices for said articles and have prevented and destroyed competition in the purchase and sale of said products of petroleum in this state as charged in the information, and thereupon, it is now considered, ordered and adjudged by the court that by reason of the violation of said Statutes of this State, in forming and entering into and maintaining said unlawful combination, conspiracy and pool, the said Standard Oil Company, organized under the laws of the state of
532 Indiana and heretofore licensed to do business in this State, and the said Republic Oil Company, organized under the laws of the State of New York, and licensed to do business in this State, have each and both forfeited their respective licenses heretofore granted them by the Secretary of State of Missouri, and it further considered, ordered and adjudged that said license of the said Standard Oil Company of Indiana, and the said license of the said Republic Oil Company of New York, be and the same are hereby forever forfeited, annulled and cancelled and the said Standard Oil Company, of Indiana and the said Republic Oil Company of New York, are hereby ousted of any and all rights and franchises granted to them, under the laws of this state, to further do business in this state, and it is further considered and ordered and adjudged that the said "Standard Oil Company" of Indiana and the said "Republic Oil Company" of New York, each for the violation aforesaid of the laws of this state, in forming entering into and maintaining the conspiracy and combination to regulate control and fix the prices of said products of petroleum in this state and to prevent competition in said business, be fined fifty thousand dollars, and that each of said respondents, the said Standard Oil Company of Indiana, and the said Republic Oil Company, of New York, pay each the said sum of fifty thousand dollars to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of the State, and upon default and failure so to do, that the State of Missouri have execution therefor, to be levied and enforced according to the laws of this state, in such cases made and provided, and it is further considered, ordered and adjudged by the court, that the said respondent, the said "Waters-Pierce Oil Company, by its violation of the said laws and statutes of this state, against "Pools, trusts and conspiracies" and known as Chapter 143 of the Revised Statutes of Missouri, 1899, has forfeited its charter to do business in this state and it is therefore considered, ordered and adjudged by the court that the right and franchise
533 heretofore granted to said Waters-Pierce Oil Company, to be a body corporate and to do business and contract as such, with all other rights acquired by its certificate of incorporation, be and the same are hereby forever forfeited, annulled and set aside and said Waters-Pierce Oil Company, is hereby ousted of its cor-

porate rights and powers and franchises heretofore granted to and enjoyed by it under the laws of this state, subject however to the further provisions of this judgment, and for the violation of its said franchises, by forming, entering into and maintaining the said pool, combination and conspiracy, to regulate, control and fix the prices of the products of petroleum, as hereinbefore specifically found and set forth and to prevent competition in the business of buying and selling said products in this state, it is considered, ordered and adjudged by the court that in addition to said ouster, said Waters-Pierce Oil Company be fined fifty thousand dollars, and that it pay said fine of fifty thousand dollars, to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of this State, and upon default and failure to pay said fine on or before said date, the State of Missouri have execution therefor to be levied by the Marshal of this court and enforced according to the laws of this state in such cases made and provided. But it is further considered, ordered and adjudged by this court, that if the said Waters-Pierce Oil Company, shall pay said fine to the clerk of this court on or before the first day of March 1909, and shall immediately cease all connection with the said other respondents herein in continuing or maintaining said pool, trust and conspiracy to fix control and regulate the prices of naptha, benzine, gasoline, kerosene, lubricating oil and all other products of petroleum, and shall refrain from all pools, trusts and combinations to control the prices of said products of petroleum and all combines and conspiracies to prevent competition in the trade of buying and selling said products and shall furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connection with its said co-respondents herein and all other parties or companies whatsoever and in the future main-
534 tain and carry on its business as an independent corporation in obedience to the laws of this state and its charter then the judgment of ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by order of this court and the said Waters-Pierce Oil Company is hereby given until the fifteenth day of January 1909 to file the proofs of its willingness to comply with the judgment of this court and until that date in no event, will the writ of ouster be awarded. And it is further considered, ordered and adjudged by the court that if it shall be shown to the satisfaction of this court hereafter, that notwithstanding the promises and assurances of the said Waters-Pierce Oil Company to abide by this judgment, it has violated the conditions of this judgment and has violated the said statute against "Pools, Trusts and conspiracies," then and in such case, the suspension of the writ of ouster shall be removed by this court and absolute ouster be enforced as directed and adjudged herein. It is further ordered and adjudged that the State of Missouri at the relation of the Attorney General have and recover its costs herein paid and expended, including the allowance of the special commissioner and the stenographer in taking and certifying the testimony herein

and the fees of the witnesses and have execution therefor, against all of said respondents. (Opinions filed.)

Which said opinions are in words and figures as follows, to-wit:

535 In the Supreme Court of Missouri, Court in Banc, October Term, 1907.

(No. 12988)

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Corporations, Respondents.

Statement.

This is an original proceeding in the nature of *quo warranto*, instituted in this court on March 29th, 1905, by the Attorney General, to forfeit the charter of the Waters-Pierce Oil Company, which will hereafter be called the Waters-Pierce Company, and to revoke the licenses to do business in this state of the Standard Oil Company of Indiana, which will hereafter be called the Indiana Company, and that of the Republic Oil Company of New York, which will hereafter be styled the Republic Company; and to enjoin and prohibit all of them from doing business in this state, on the ground that they have forfeited their charters and licenses to do business in this state by the exercise and usurpation of powers not granted or authorized thereby, in that they have formed and entered into a pool, trust, combination or conspiracy in restraint of trade and against the laws of the state, known as the anti-trust statutes.

Respondents vigorously contend that the information does not state facts sufficient to constitute a cause of action against them; and that the evidence disclosed by the record fails to establish the charges contained in the information.

Those contentions necessarily call for a consideration of the pleadings, and an extensive review of the evidence, which covers three thousand pages of printed matter.

536 Omitting the formal parts, the information, answers and reply are as follows.

Comes now Herbert S. Hadley, Attorney General of the State of Missouri, who prosecutes this suit in behalf of the State of Missouri, and causes the court to understand and be informed that the Standard Oil Company, one of the respondents herein, is now, and at all times mentioned herein was, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose of engaging in the business of refining petroleum and buying and selling the products thereof, that it is now, and at all times herein mentioned was, authorized to do business in the State of Missouri, having complied with the laws of this State authorizing

and permitting foreign corporations to do business herein; and at all times herein mentioned was engaged in the business of selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, and that recently it has established, and is now conducting a refinery in this State, for the purpose of refining petroleum; that the Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the State of New York, for the purpose of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all times herein mentioned was authorized to do business in the State of Missouri, having complied with the laws of this State authorizing foreign corporations to do business in this State; and at all times herein mentioned was engaged in the business of buying and selling the products of petroleum in certain parts of the State of Missouri; that the Waters-Pierce Oil Company is now, and at all times herein mentioned was, a corporation duly organized under and by virtue of the laws of the State of Missouri for the purpose of refining petroleum and buying and selling the products thereof, and at all times herein mentioned was engaged in the business of buying and selling the products of petroleum in certain parts of the State of Missouri.

Your informant further informs the Court that the said Standard Oil Company, Republic Oil Company and the Waters-Pierce Oil Company, between the — day of ——, 1901, and the 29th
537 day of March, 1905, created, entered into and became members of a pool, trust, agreement, confederation, combination and understanding among *our*selves, and each other, to regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum offered for sale or sold in the State of Missouri, and to control and limit the trade in naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri; and to control, limit and prevent competition in said business of buying and selling naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, between themselves and others engaged in like business, and to deceive and mislead the public into the belief that said respondents were separate and distinct corporations, each pursuing an independent business as legitimate competitors in the purchase and sale of said products of petroleum; and that said respondents have by said pool, trust, agreement, confederation, combination and understanding, fixed and maintained the price of naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum sold and offered for sale by them in this State, and have controlled and limited the trade in said products in this State, and have prevented and destroyed competition in the purchase and sale of said products of petroleum in the State of Missouri, and have deceived and misled the public into the belief that they, the said respondents, were separate and distinct corporations, each pursuing an independent business as legitimate competitors, when, in fact, the said respondents, had entered into and were members of said

pool, trust, agreement, confederation, combination and understanding all to the great detriment and damage of the purchasing public and the people of Missouri.

And your Informant further states that in the pursuance of said pool, trust, agreement, confederation, combination and understanding so entered into by said respondents as aforesaid, for the
538 accomplishment of the objects and purposes aforesaid, the territory of the State of Missouri, has, by said respondents, been di*dived* up between the Standard Oil Company and the Waters-Pierce Oil Company; and that the said Standard Oil Company, according to said agreement so entered into by said respondents, as aforesaid, has agreed not to sell, and does not sell, said products of petroleum in the State of Missouri in a territory therein lying for the most part south of the Missouri river, which said territory is, by said agreement, assigned to said Waters-Pierce Oil Company; and that said Waters-Pierce Oil Company, according to said combination, confederation, agreement and understanding as aforesaid, has agreed not to sell, and does not sell, any of said products of petroleum in certain territory in the State of Missouri lying mostly north of the Missouri river, which said territory is, by said agreement, assigned to said Standard Oil Company; that the said Republic Oil Company, according to said combination, confederation, agreement and understanding, so had by respondents as aforesaid, sell oil in different parts of the State of Missouri, in territory in which, by said agreement, the Standard Oil Company does not sell, and in which, by said agreement, the Waters-Pierce Oil Company does not sell, but that the purpose and object accomplished under said agreement through the sale of oil by the said Republic Oil Company is to supply oil to such retail dealers therein, and others, who by reason of prejudice against said Waters-Pierce Oil Company or said Standard Oil Company, or from other reasons, refuse to trade with either of said respondents in their respective territories; and the further object accomplished by said Republic Oil Company, under said agreement, confederation, combination and understanding so had by respondents as aforesaid, in selling oil in each of said territories, is to enable said respondents, in the accomplishment of the purpose of said pool, trust, agreement, confederation, combination and understanding, to crush out competitors in the sale of the products of petroleum by temporarily reducing the price thereof through sales made by said Republic Oil Company.

539 But your Informant further states that no actual competition exists in the sale of said products of petroleum, between said Republic Oil Company and the Standard Oil Company in that territory in the State of Missouri assigned to said Standard Oil Company, according to said agreement, confederation, and understanding, and that no actual competition exists in the sale of said products of petroleum, between said Republic Oil Company, and the Waters-Pierce Oil Company in that territory in the State of Missouri assigned to said Waters-Pierce Oil Company, according to said combination, confederation and agreement.

Your Informant further informs the court that each and all of

said respondents appear to the public in this State as separate and distinct corporations, pretending to pursue an independent business as legitimate competitors in the purchase and sale of such products of petroleum when, in fact, there exists said secret agreement, combination, pool, trust, and understanding by and between said respondents by which they control the price of said products of petroleum sold in the State of Missouri and prevent competition in the price thereof among themselves and crush out and destroy competition from others; and that said respondents, under and by virtue of said pool, trust, combination, agreement and understanding, so maintained and entered into by them, deceive and mislead the public, and are deceiving and misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors.

Your informant further causes the court to be informed and to understand that the said Standard Oil Company is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, and other points, large oil refineries wherein said products of petroleum hereinbefore mentioned are made and produced from the refining of petroleum; that by virtue of the understanding, combination, confederation and agreement so made and entered into by said respondents as aforesaid,
540 and in addition to the other objects and purposes thereof, and in addition to the other acts of said respondents done in compliance therewith and in the enforcement thereof, said Standard Oil Company has agreed to sell, and sells said products of petroleum in the State of Missouri only to the Waters-Pierce Oil Company and the Republic Oil Company and through itself, and the said Waters-Pierce Oil Company and Republic Oil Company have, by said agreement, agreed to buy, and do buy, said products of petroleum only of the Standard Oil Company.

Your Informant further states that said respondents herein, by reason *by* said combination, pool, trust and understanding, and the acts done in furtherance and in pursuance thereof, as herein stated, have been able to control and supply, and do control and supply, to the retail dealers and to the general public in the State of Missouri, from eighty-five to ninety percent of all the naptha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum offered for sale and sold for general consumption in the State of Missouri; and that by virtue of said pool, trust, agreement, combination, confederation and understanding so entered into by said respondents as aforesaid, and by reason of the acts hereinbefore described, so done by said respondents in pursuance of and in the enforcement of said pool, trust, agreement and understanding, they have been able to control, and do control, the prices of the products of petroleum in the State of Missouri, and they do prevent, and have prevented competition among themselves in the purchase and sale of the products of petroleum in the State of Missouri; they have secured control of the oil business and of the purchase and sale of oil in the State of Missouri and have limited the trade therein and have driven out competition in said business, and that said combination, confederation,

pool, trust and understanding so entered into and maintained by said respondents as aforesaid, and said acts and methods done and performed by said respondents in pursuance and in furtherance thereof,
have deprived, and do deprive, the public of free, full and
541 wholesome competition in the sale of the products of petroleum, to the great damage and detriment of the purchasing public and the people of Missouri.

Informant further states that by reason of the monopoly and control of the oil business in the State of Missouri so had and maintained by said respondents as aforesaid, and the prevention of competition in the purchase and sale of said products of petroleum as aforesaid, in the manner and by the means aforesaid, and by reason of the deception so accomplished by said respondents upon the general public whereby it is caused to believe that said respondents are independent corporations engaged in a competitive business, and by reason of the acts of said respondents, as herein stated, said respondents are now wilfully and unlawfully maintaining an illegal agreement, combination, pool, trust and understanding, and are now unlawfully and illegally fixing and controlling the prices, in the manner aforesaid, for the products of petroleum sold in the State of Missouri; and by reason of the premises, said respondents have since the — day of ——, 1901, and up to the present time, grossly offended against the laws of this State and wilfully and flagrantly abused and misused their rights, authority and franchises, and have wilfully and unlawfully assumed and unlawfully and wilfully usurped authorities and privileges not granted to said corporations by the laws of Missouri, by entering into and becoming a member of said trust, combination, confederation, agreement and understanding as aforesaid; and in pursuance of the aforesaid agreement, combination, trust, confederation and understanding so made and maintained as aforesaid, respondents are now, in the State of Missouri, unlawfully and wilfully, monopolizing, regulating, fixing, maintaining and controlling the price to be paid by retail dealers and others in the State of Missouri for the said products of petroleum, and unlawfully limiting the trade and competition in the purchase and sale of said products of petroleum, and are now
542 unlawfully and wilfully deceiving and misleading the retail dealers in said products of petroleum and the general public into the belief that said respondents are independent or competing corporations, and that the acts and agreements of the respondent corporations, as herein set forth, constitute a wilful and malicious perversion of the franchise granted to said corporations by the State of Missouri, and an illegal and wilful usurpation of privileges and authorities not granted to said respondents by the State of Missouri, to the great and permanent injury of the public.

Wherefore, your Informant, prosecuting in this behalf for the State of Missouri, prays that the respondents corporations, and each of them severally, be excluded from all corporate rights and privileges under the laws of the State of Missouri, and that their franchises, rights, authority, license and certificate to do business under the laws of the State of Missouri be declared forfeited, and that

each and all of them be ousted from their several corporate franchises, privileges, license and authority to do business under the laws of this State.

Afterwards, to-wit, on the 11th day of April, 1905, the respondent, Standard Oil Company, filed its separate answer and return to said order to show cause, which, omitting caption, is as follows:

Now comes said respondent and, for answer and return to the information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the state of Indiana, for the purpose, among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the State authorizing and permitting foreign corporations to do business therein, and having a license from the State authorities so to do; it was at all the times mentioned
543 in the information engaged in the business of selling naphtha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson county, Missouri, for the purpose of refining petroleum, having expended many thousands of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the state of New York, for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all times mentioned in the information was authorized to do business in this state, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the State for such purposes; at all times herein mentioned it was engaged in the business of buying and selling the products of petroleum in this State, as it was authorized to do by its articles of incorporation, by the laws of the State, and by the license aforesaid.

The Waters-Pierce Oil Company is now and — all the times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, for the purpose, among others, of refining petroleum, and buying and selling the products thereof; and at all the times herein mentioned was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

The respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not

544 at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination, pool, or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding, with either or any of the other respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naphtha, benzine, gasoline, kerosene, lubricating oil or any or either of them or any other product of petroleum in Missouri, or to control or limit the trade in naphtha, benzine, gasoline, kerosene, lubricating oil, or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in said business of buying or selling naphtha, benzine, gasoline, kerosene, lubricating oil, or any or either of them, or any other product of petroleum in Missouri between the respondents or others engaged in like business, or dec-ive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondents, or either of them, fixed or maintained the prices of naphtha, benzine, gasoline, kerosene or lubricating oil, or any or either of them, or any other product of petroleum sold or offered for sale by it, or either of them, in this State, nor controlled or limited the trade of said products in this State; nor prevented or destroyed competition in the purchase or sale of said products, or any or either of them, in this State, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust, agreement, confederation, combination or understanding.

545 This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the State of Missouri between the Standard Oil Company and the Waters-Pierce Oil Company. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell any of said products in this State in a territory therein lying for the most part south of the Missouri river, nor is such territory, by any agreement, assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or understanding, agreed not to sell, and does not sell any of said products in certain territory in Missouri, lying mostly north of the Missouri river, nor is any such territory, by any agreement, assigned to the Standard Oil Company. It is not true that the Republic Oil Company, according to any combination, confederation, agreement or understanding, had by the respondents, or any of them, sells oil

in different parts of the State in territory in which by any agreement, the Standard Oil Company does not sell and in which, by any agreement, the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agreement or otherwise through the sale of oil by the Republic Oil Company is to supply oil to such retail dealers in the State, or others who, by reason of prejudice or otherwise, against the Waters-Pierce Oil Company, or the Standard Oil Company, or for any other reason, refuses to trade with either of said respondents in said alleged territory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, combination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondent in the
546 accomplishment of the purposes of any pool, trust agreement, confederation or understanding, to crush out competitors in the sale of petroleum, by temporarily reducing the price thereof through sale, made by the said Republic Oil Company, or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the State of Missouri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of products of petroleum between the said Republic Oil Company and the Waters-Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are separate and distinct corporations, but it is not true that either makes any false pretenses to pursuing an independent business as legitimate competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool, trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents, or either of them, under and by virtue of any pool, trust, combination, agreement or understanding, maintained or entered into by them, deceive and mislead the public, or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the
547 refining of petroleum; but it is not true that by virtue of any understanding, combination, confederation, or agreement made or entered into by respondents, or any of them, or in addition to other objects or purposes, or in addition to any other act of any respondent done in compliance with any such combina-

tion, understanding, confederation or agreement, or in the enforcement thereof, that the Standard Oil Company has agreed to sell, or sells said products of petroleum in the State of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

It is not true that respondents, or either of them, by reason of any combination, pool, trust, or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust or understanding, have been able to control the supply, or do control and supply to the retail dealers, and to the general public in the State from eighty-five to ninety percent, or any other percent of all the naphtha, benzine, gasoline, kerosene, lubricating oil, or other products of petroleum offered for sale or sold for general consumption in the State.

It is not true that by virtue of any pool, trust agreement, combination, confederation or understanding entered into by respondents, or by reason of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents, or either of them, have been able to control, or do control the prices of the products of petroleum in the State, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the State, or have limited the trade therein, or have driven out competition in said business.

548 It is not true that any combination, confederation, pool, trust or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them, or either of them, have deprived or do deprive the public of free, full or wholesome competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occurring to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the products of petroleum, or by reason of any deception accomplished by respondents or otherwise that said respondents, or either of them, are now wilfully or unlawfully or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or controlling the prices of the products of petroleum sold in the State. It is not true that respondents or either of them have, since the — day of —— 1901, and up to the present time, or at any time grossly or otherwise offended against the laws of this State, or wilfully or flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges not granted to

corporations by the laws of Missouri, by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust, confederation or understanding made or maintained, the respondents are now in this State unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the State of Missouri for the said products of petroleum, or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public
549 into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchise granted to respondents by this State, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondents by the State, and it is not true that there is or has been, by any act of respondents, any injury to the public.

Wherefore, respondent asks to be dismissed with costs.

And on the same day, the respondent, Republic Oil Company filed its separate answer and return in response to said order to show cause which, omitting the caption, is as follows:

Now comes said respondent, and, for answer and return to the information of the Attorney General in the above entitled cause, avers:

1. The Standard Oil Company of Indiana, one of the respondents herein, is now and was at all times herein, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, for the purpose, among others, of engaging in the business of refining petroleum, and buying and selling the products thereof; and is now, and at all the times mentioned in the information was authorized to do business in Missouri, having complied with the laws of the State authorizing and permitting foreign corporations to do business therein, and having a license from the State authorities so to do; it was at all the times mentioned in the information engaged in the business of selling naphtha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum in the State of Missouri, and was, by its articles of incorporation and the license and authority aforesaid, authorized so to do; it recently established and is now conducting a refinery in Jackson County, Missouri, for the purpose of refining petroleum, having expended many thousand- of dollars in the construction thereof.

The Republic Oil Company is a corporation duly organized and existing under and by virtue of the laws of the State of New
550 York, for the purpose, among others, of carrying on the business of refining petroleum and buying and selling the products thereof, and is now, and at all times mentioned in the information was authorized to do business in this State, having complied with its laws authorizing foreign corporations to do business therein, and having obtained and now holding a license from the proper authorities of the State for such purposes; at all times

herein mentioned it was engaged in the business of buying and selling the products of petroleum in this State, as it was authorized to do by its articles of incorporation, by the laws of the State, and by the license aforesaid.

The Waters-Pierce Oil Company is now, and at all times mentioned in the information, was a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, for the purpose, among others, or refining petroleum, and buying and selling the products thereof; and at all the times therein mentioned was engaged in buying and selling the products of petroleum in Missouri.

Each and every other allegation and averment in the information is denied.

This respondent never made or entered into any agreement, confederation, combination, pool or understanding with the other respondents, or either of them, of any kind or character. It did not at any time create, enter into or become a member of any pool, trust, agreement, confederation, combination or understanding with either or any of the other respondents to regulate, fix or control the price to be paid by retail dealers or others in Missouri for naphtha, benzine, gasoline, kerosene, lubricating oil, or any or either of them, or any other product of petroleum in Missouri, or to control or limit the trade in naphtha, benzine, gasoline, kerosene, lubricating oil, or any or either of them, or any other product of petroleum in Missouri, or to control, limit or prevent competition in
551 said business of buying and selling naphtha, benzine, gasoline, kerosene, lubricating oil, or any or either of them, or any other product of petroleum in Missouri between the respondents or others engaged in like business, or deceive or mislead the public into any false belief as to respondents being separate or distinct corporations; each pursuing an independent business as legitimate competitor in the purchase or sale of said products of petroleum. This respondent has not, by any pool, trust, agreement, confederation, combination or understanding with the other respondents, or either of them, fixed or maintained the prices of naphtha, benzine, gasoline, kerosene, or lubricating oil, or any or either of them, or any other product of petroleum sold or offered for sale by it, or either of them, in this State, nor controlled or limited the trade of said products in this state; nor prevented or destroyed competition in the purchase or sale of said products, or any or either of them, in this State, nor deceived or misled the public into any false belief that as to respondents being separate and distinct corporations, or pursuing an independent business as legitimate competitors; and never had this respondent, with either of the other respondents, entered into or become a member of any pool, trust, agreement, confederation, combination or understanding.

This respondent has not, in pursuance of any pool, trust, agreement, confederation, combination or understanding, entered into with either of the other respondents for the accomplishment of any object or purpose, divided the territory of the State of Missouri between the Standard Oil Company and the Waters-Pierce Oil Com-

pany. The Standard Oil Company has not, according to any agreement entered into by respondents, agreed not to sell, or does not sell, any of said products in this State, in a territory therein lying for the most part south of the Missouri River, nor is any such territory by any agreement assigned to respondent, the Waters-Pierce Oil Company; nor has the Waters-Pierce Oil Company, according to any combination, agreement, confederation or understand-
552 ing, agreed not to sell, and does not sell, any of said products in certain territory in Missouri, lying mostly north of the Missouri river, nor in any such territory, by any agreement, assigned to the Standard Oil Company. It is not true that the Republic Oil Company, according to any combination, confederation, agreement or understanding, had by the respondents, or any of them, sells oil in different parts of the State in territory in which, by any agreement, the Standard Oil Company does not sell and in which, by any agreement, the Waters-Pierce Oil Company does not sell.

It is not true that the purpose or object accomplished by any agreement or otherwise through the sale of oil by the Republic Oil Company is to supply oil to such retail dealers in the State, or others who, by reason or prejudice or otherwise, against the Waters-Pierce Oil Company, or the Standard Oil Company, or for any other reason, refuses to trade with either of said respondents in said alleged territory or territories. It is not true that the Republic Oil Company accomplishes the object under any agreement, confederation, combination or understanding in selling oil in either of the alleged territories aforesaid so as to enable the other respondents in the accomplishment of the purposes of any pool, trust, agreement, confederation or understanding, to crush out competitors, in the sale of petroleum, by temporarily reducing the price thereof through sales made by the said Republic Oil Company or otherwise.

It is not true that no actual competition exists in the sale of the products of petroleum between the Republic Oil Company and the Standard Oil Company in any territory in the State of Missouri, or according to any agreement, confederation or understanding; and it is not true that no actual competition exists in the sale of products of petroleum between the said Republic Oil Company and the Waters-Pierce Oil Company in any of said alleged territory, or according to any combination, confederation or agreement.

It is true that each and all of said respondents are
553 separate and distinct corporations, but it is not true that either makes any false pretenses to pursuing an independent business as legitimate competitors in the purchase or sale of said products, nor that there in fact exists any secret agreement, combination, pool, trust or understanding by or between the said respondents, or either of them, by which they control the prices of the products of petroleum sold in Missouri, or prevent competition in the prices thereof among themselves, or crush out or destroy competition from others.

It is not true that respondents, or either of them, under and by virtue of any pool, trust, combination, agreement or understanding,

maintained or entered into by them, deceive and mislead the public, or are deceiving or misleading the public into the belief that they are separate and distinct corporations pursuing an independent business as legitimate competitors, when they are not such in fact.

It is true that said Standard Oil Company of Indiana is engaged in the business of refining petroleum, and has, at Whiting, Indiana, and near Kansas City, Missouri, large oil refineries wherein said products of petroleum are made and produced from the refining of petroleum; but it is not true that by virtue of any understanding, combination, confederation, or agreement made or entered into by respondents, or any of them or in addition to other objects or purposes, or in addition to any other act of any respondent done in compliance with any such combination, understanding, confederation or agreement, or in the enforcement thereof, that the Standard Oil Company has agreed to sell, or sells said products of petroleum in the State of Missouri, only to the Waters-Pierce Oil Company and to the Republic Oil Company and through itself, or that said Waters-Pierce Oil Company or the Republic Oil Company has, by any such agreement, agreed to buy, or does buy said products of petroleum only from the Standard Oil Company.

554 It is not true that respondents, or either of them, by reason of any combination, pool, trust or understanding, or any acts done in furtherance or in pursuance of any combination, pool, trust or understanding, have been able to control the supply, or do control and supply to the retail dealers and to the general public in the State from eighty-five to ninety per cent, or any other per cent, of all the naptha, benzine, gasoline, kerosene, lubricating oil or other products of petroleum offered for sale or sold for general consumption in the State.

It is not true that by virtue of any pool, trust, agreement, combination, confederation or understanding entered into by respondents, or by reason of any of the acts done by them in pursuance or in the enforcement of any pool, trust, agreement or understanding, that respondents, or either of them, have been able to control, or do control the prices of the products of petroleum in the State, or that they do prevent or have prevented competition among themselves in the purchase or sale of the products of petroleum in Missouri, or that they have secured control of the oil business, or of the purchase or sale of oil in the State, or have limited the trade therein, or have driven out competition in said business.

It is not true that any combination, confederation, pool, trust or understanding has been entered into or maintained by respondents, or either of them, or that any acts or methods done or performed by them, or either of them, have deprived or do deprive the public of free, full or wholesale competition in the sale of the products of petroleum.

It is not true that any damage or detriment has occurred or is occurring to the purchasing public or the people of Missouri by any act of the respondents, or either of them. It is not true that by reason of any monopoly or control of the oil business in Missouri, or by the prevention of competition in the purchase or sale of the

products of petroleum, or by reason of any deception accomplished by respondents or otherwise that said respondents, or either
555 of them, are now wilfully or unlawfully, or otherwise maintaining any illegal agreement, combination, pool, trust or understanding, or are now unlawfully or illegally fixing or controlling the prices of the products of petroleum sold in the State. It is not true that respondents, or either of them, have, since the — day of ——, 1901, and up to the present time, or at any time grossly or flagrantly or otherwise abused or misused their rights, authority or franchises, or have wilfully or unlawfully or otherwise assumed, or unlawfully, wilfully or otherwise usurped authorities or privileges not granted to corporations by the laws of Missouri by entering into or becoming a member of any trust, combination, confederation, agreement or understanding. It is not true that in pursuance of any agreement, combination, trust, confederation or understanding, made or maintained, the respondents are now in this State unlawfully, wilfully or otherwise monopolizing, regulating, fixing, maintaining or controlling the prices to be paid by retail dealers or others in the State of Missouri for the said products of petroleum or unlawfully limiting the trade or competition in the purchase or sale of such products, or unlawfully, wilfully or otherwise deceiving or misleading the retail dealers in such products, or the general public into any false belief of any kind. It is not true that any act or agreement of the respondents constitutes a wilful, malicious or other perversion of the franchise granted to respondents by this State, or an illegal, wilful or other usurpation of privileges or authorities not granted to respondent by the State, and it is not true that there is or has been, by any act of respondents, any injury to the public.

Wherefore, respondent asks to be dismissed with costs.

After the conclusion of the testimony in this case, to-wit, on February 11, 1907, the respondents, the Standard Oil Company and the Republic Oil Company, filed a second amended answer, in which the following additional defenses were pleaded:

2. The information herein is based upon the alleged viola-
556 tion of the provisions of each of sections 8965, 8966, 8967, 8968, 8971, 8972, 8978, of the Revised Statutes of Missouri, 1899, and seeks to enforce the provisions of each of said sections. Each of said sections is unconstitutional and void, for each of the following reasons:

(a) It violates the fourteenth amendment to the Constitution of the United States, wherein it is provided that no state shall deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction equal protection of the laws, nor make or enforce any law which shall abridge the privileges and immunities of citizens of the United States.

(b) It violates the provisions of section 8, article I of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several states and Indian tribes, in which commerce respondent is engaged.

(c) It violates section 10 of article I of the Constitution of the

United States, which provides that no state shall pass any *ex post facto* law, or law impairing the obligations of contracts.

(*d*) It violates section 4, article 2 of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(*e*) It violates the provisions of section 30, article 2 of the Constitution of the State of Missouri, providing that no person shall be deprived of life, liberty or property without due process of law.

(*f*) It violates section 53 of article 4 of the Constitution of the State of Missouri, which forbids the legislature from granting to any corporation, association or individual any special or exclusive right, privilege or immunity.

(*g*) It prohibits all barter and commerce, by prohibiting any two or more persons from agreeing upon either the present or future price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever as between themselves, whether the same tends to the prejudice of the public interest or not, whether in restraint of trade, whether reasonable or unreasonable under the circumstances and limitations of such fixing of prices of said commodities, without regard to the relation of the parties to such agreement or their purposes, and in each of such respect violates each of the foregoing provisions of the State and Federal Constitutions.

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(*h*) It arbitrarily discriminates as between the vendors and purchasers of such articles, in that it prohibits two or more vendors from agreeing among themselves to establish a reasonable price for such articles of merchandise, but does not prohibit the purchasers from agreeing to fix a price at which they may purchase said articles, and tends to assure, and does assure, to purchasers such prices as may be established by unhealthy and ruinous competition, but does not assure to the vendors protection or the right to protect themselves, by agreement or otherwise, against ruinous rates established either by unwholesome or unhealthy competition or the combination of purchasers, and in each of such respects violates each of the foregoing provisions of the State and Federal Constitutions.

(*i*) It grants special privileges to the buyers of products of the character mentioned therein, by combination or otherwise, while denying to the manufacturers or vendors of the same right to protect themselves against such combination, or assuring themselves of the means of realizing a reasonable profit for their capital, labor and skill, and in each of such respects it violates each of the foregoing provisions of the State and Federal Constitutions.

(*j*) It arbitrarily discriminates between different classes of products and between labor and capital, between different kinds of insurance companies, and between different kinds of insurance, and also between different classes of persons, and in each of such respects violates each of the foregoing provisions of the State and Federal Constitutions.

558 (*k*) It applies to commodities and not to labor and other matters which may be the subject of combination, and thereby discriminates arbitrarily.

Wherefore this respondent asks to be dismissed with costs.

3. Respondent re-avers each and every allegation set forth in division 2 of this return, and further respectfully shows that the informant claims that under the laws of this State and the construction of the statutes the respondent in a *quo warranto* proceeding cannot attack the constitutionality of an act of the legislature, the provisions of which are invoked and sought to be enforced in said *quo warranto* proceedings, without admitting a violation of the said statute. And the informant claims that this court has so decided in the case of The State *ex inf.* Crow, Attorney General, v. The Firemen's Fund Insurance Company et al., 152 No. 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the State depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the fourteenth amendment to the Constitution of the United States, hereby and herein invoked.

Wherefore respondent ask*ed* to be dismissed with costs.

4. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of sections 8965, 8966, 8967, 8971, 8972 or 8978 of the Revised Statutes of Missouri, 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the fourteenth amendment to the Constitution of the United States, the provisions of which are hereby invoked.

559 Wherefore respondent asks to be dismissed with costs.

5. Among other things, the relief sought in this case and the penalties prescribed by chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, is that none of the property purchased, owned, held and used by the respondent within the State of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any purpose, without incurring the penalties prescribed in section 8972. Upon the faith and in the reliance of the certificate granted to it by the State of Missouri, to do business in the said State, as averred in the information, this respondent, long prior to the enactment of said chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said State, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said State under the certificate aforesaid.

Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and construed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, to-wit: at least to the extent of 90 per cent thereof. Wherefore, the respondent says that the provisions of said section 8972, above mentioned, are in violation of sections 4 and 30 of article II and section 53 of article IV of the Constitution of Missouri and of section 8 of article I of, and the fifth and fourteenth amendments to the Constitution of the United States, each and every provision of which this respondent now hereby expressly invokes in its behalf, for that the effect of said statutes and of the enforcement
560 thereof by granting the relief prayed by the present cause will be to deprive the respondent of its said property and its use without due process of law, to deny to this respondent the equal protection of the law, and to deprive it of life, liberty and property without due process of law, deprive respondent of the natural right of life, liberty and the enjoyment of the gains of its own industry, grant special and exclusive rights, privileges and immunities to others and interfere with respondent continuing to buy and sell products in and ship products as articles of commerce to and from foreign nations and different states. Said properties are used in the conduct of interstate commerce, so that the prohibition of the use thereof operates as a regulation of interstate commerce and as a restraint upon commerce among the several states and territories and with the District of Columbia within the meaning of the act of Congress of July 2d, 1890, which act of Congress, by the express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by Congress by virtue of the power granted by the Federal Constitution. Said Section 8972 is a part and parcel of an entire and complete system and the unconstitutionality of the above mentioned provision destroys the entire chapter, or at least the article on which this action is based.

In complying with the laws of this State and in obtaining certificates and licenses to do business therein, as mentioned and set forth in the information, respondent paid money to the State of Missouri, which has been held and used by the said State, and on the faith of the statutes authorizing it to do business and the licenses issued, as stated in the information, respondent invested large sums of money in the State of Missouri. The licenses and rights to do business so granted by and acquired under the laws of Missouri were without any right or reservation on the part of the State to amend, alter or repeal the same. Among other rights thereby granted by the State to the respondent was one to make any and all reasonable contracts and agreements. No other kind of a contract
561 was ever made by this respondent. Each of the provisions of sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978

of the Revised Statutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the provisions of section 10 of article I of the Constitution of the United States are violated.

Wherefore respondent asks to be dismissed with costs.

And on the 14th day of April, 1905, the respondent, Waters-Pierce Oil Company, filed its separate answer, which, omitting caption, is as follows:

Now comes Waters-Pierce Oil Company, one of the respondents herein, and for its separate answer and return to the information of the Attorney-General in the above entitled cause, and to the writ issued thereon, states that it is true, as alleged in said information, that said Waters-Pierce Oil Company is, and at all times in said information, was a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, and that at all times in said information mentioned it was engaged in the business of buying and selling the products of petroleum; and that by warrant and authority of said laws of the State of Missouri, and its due organization thereunder, this respondent holds, uses and exercises its corporate rights, privileges and franchises in this State.

And further answering, Waters-Pierce Oil Company denies that between the — day of —— 1901, and the 29th day of March, 1905, or at any time, it created, entered into or became a member of a pool, trust, agreement, confederation, combination or understanding with the Standard Oil Company and the Republic Oil Company, or either of them, for any of the purposes which are in said information set forth; or that it, Waters-Pierce Oil Company, has in any manner been guilty of any of the things which are in said information alleged or charged against it.

And further, said Waters-Pierce Oil Company denies each
562 and every allegation and charge in said information which is directed against, it, Waters-Pierce Oil Company, and which is not herein specifically admitted.

Wherefore, this respondent asks to be dismissed with costs.

And afterwards on the 3d day of May, 1905, the court made and entered in the cause an order appointing Robert A. Anthony Special Commissioner to take testimony on the issues thus joined, said order being as follows:

"Now at this day, it appearing to the court from the pleadings in the above entitled cause, that the issues of fact are joined therein, therefore, upon motion and request of Herbert S. Hadley, Attorney General that a Special Commissioner be appointed by the court to take the testimony upon the issues joined in said case, it is ordered by the court that Robert A. Anthony, Esq., of Fredericktown, Missouri, be and he is hereby appointed Special Commissioner to take testimony upon the issues joined in said cause, with full power and authority to issue subpœnas, compelling the attendance of witnesses, the production of papers, books and other documents, to issue attachments therefor, and to hear and determine all objections to testimony and to admit or exclude the same in the same manner and

to the same extent as this court might in the trial of the case before the court, and to report the testimony, with his findings of fact thereon, to this court with convenient speed, provided that such report shall be filed by the first day of the October term, 1905, unless further continued for good cause; exceptions to the findings of fact so made by said Special Commissioner to be filed by either party so desiring within ten days after the filing of the Commissioner's report and findings."

While the main facts of the case are virtually undisputed, yet the deductions and inferences to be drawn therefrom are so numerous and vital to the final disposition of the cause; and the contentions of opposing counsel are so radically different regarding same, taken in connection with the large pecuniary interests in-
563–821 volved and the great importance of the result of the suit to the entire people of the State, in our judgment, justify us in setting out the substance of the evidence.

The printed record in this cause fills three large volumes and cover about three thousand pages; the relator's printed abstract thereof fills two large volumes of about five hundred pages each and with commendable energy and industry, characterized by a spirit of justice and fairness, the master has carefully prepared a terse yet a full abstract of the evidence in a printed volume of two hundred and twenty pages, which is conceded to be substantially correct and which is substantially as follows:

* * * * * * *

(See Master's Report. Omitted here per stipulation.)

* * * * * * *

822 Upon the incoming report of the Master, the respondents, the Standard Oil Company and the Republic Oil Company filed seventy-five exceptions thereto, and the Waters-Pierce Oil Company filed thirty additional ones.

It will serve no useful purpose to set out these exceptions in the statement of the case, for the reason that such of them as have been accentuated by discussion, in briefs of counsel will be carefully considered under appropriate headings in the opinion.

I.

As elsewhere stated, this is an original proceeding, instituted in this court by the Attorney General, on information, in the nature of *quo warranto*, against the respondents to forfeit their charters and revoke their licenses to transact business in this state.

The contention of the informant is, that respondents are guilty of violations of the anti-trust laws of the state, as found in the common law and statutes. The latter are found in Articles I and II of Chapter 149, Revised Statutes 1899, and the provisions thereof in so far as they are material to this controversy are sections 8965, 8966, 8971 and 8978.

Omitting such portions of the sections which are inapplicable to the questions involved in this case, and using the word "person"

where the words "individual," "partnership," "Corporation" or association or persons" occur in the statute, those provisions are as follows:

SECTION 8965. Any person who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any person or persons to regulate or fix the price of any article of manufacture, merchandise, commodity, etc., or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, trust, agreement, contract, combomination or confederation to fix or limit the amount or quantity of any article of manufacture, merchandise, commodity, etc., shall be deemed and adjudged guilty of a conspiracy to defraud and be subjected to the penalties provided for in this article.

SECTION 8966. All arrangements, contracts, agreements or combinations between two or more persons designated or made with a view to lessen, or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, and all arrangements, combinations, con-
824 tracts or agreements whereby or under the terms of which it is proposed, stipulated, provided, agreed or understood that any person or persons doing business in this state shall deal in, sell or offer for sale in this state any particular or specific article, product or commodity, and shall not during the continuance or existence of any such arrangement, combination, contract or agreement deal in, sell or offer for sale any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person or persons becoming a party to any such arrangement, contract, agreement or combination shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties provided for in this article.

SECTION 8971. Any corporation created or organized by or under the laws of this state which shall violate any of the provisions of this article, shall thereby forfeit its corporate rights and franchises and its corporate existence shall, upon proper proof being made thereof, in any court of competent jurisdiction in this state, be and by the court declared forfeited, void, and of non-effect and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any of the provisions of the preceding sections of this article shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its right and privilege to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof, that any person who has been acting as agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, in the name, behalf or interest of such foreign corporation, violating any provision of the preceding sections of this article, shall be received as prima facie proof of the act of the corporation

itself; and it shall be the duty of the clerk of said court to
825 certify the decree thereof to the Secretary of State, and if it be an insurance company, also to the Superintendent of the Insurance Department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

SECTION 8978. Every pool, trust, agreement, combination, confederation, understanding or conspiracy entered into or created or organized by any person or persons to regulate, control or fix the price of any article or articles of manufacture, merchandise, commodity, etc., or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations, conspiracies or pools made, created, entered into or organized by any persons to fix the amount or limit the quantity of any article of manufacture, commodity, etc., are hereby declared illegal. If any two or more persons who are engaged in buying or selling any articles of commerce, merchandise, commodity, etc., shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing, or to limit competition in such trade by refusing to buy from or sell to any other person or persons any such article or thing aforesaid, for the reason that such person or persons is not a member of or a party to such pool, trust, combination, confederation, association or understanding, shall be guilty of a violation of this article.

The gist of the complaint against the respondents is thus stated in the language of the Attorney-General, to-wit:

"That the respondents had, between the — day of ——, 1901, and the 29th day of March, 1905, created, entered into and become members of a pool, trust, agreement, confederation, combination, arrangement and understanding among themselves for the following purposes:

First. To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the refined products of petroleum sold and offered for sale in this state.

826 Second. To control and limit the trade in the refined products of petroleum in this state.

Third. To control, limit and prevent competition in the business of buying and selling the refined products of petroleum in this state between themselves and others engaged in like business.

Fourth. To deceive and mislead the public into the belief that said respondents were separate and distinct corporations, each pursuing an independent business as legitimate competitors in the purchase and sale of the products of petroleum.

At the very threshold of this case, we are met with the contention of the respondents that this court has no jurisdiction of this cause by a proceeding in the nature of *quo warranto*.

They, first, contend that this is a criminal prosecution and that *quo warranto* cannot be used as a criminal procedure; and, second, that the statutes under which it is instituted provide the mode of procedure and designate the forum in which it is to be conducted, which is exclusive of all other modes of procedure.

If the respondents are correct in their contention, that this is

essentially a criminal prosecution within the meaning of the constitution and criminal laws of the state, then there could be no escape from the conclusion, that this court has no jurisdiction over the course; and, if they are guilty of violating said statutes, then they are guilty of a crime; and should, first, be prosecuted upon an indictment or information, before a court and jury; and, if convicted, then, and not until then, could such a proceeding as this be maintained.

If respondents' major premise is correct, then, as before stated, this court is without jurisdiction over the cause.

In fact, we do not understand the Attorney General to controvert that proposition; but, upon the other hand, he contends that this is not a criminal prosecution in any sence of the word, but is
827 a civil proceeding on information in the nature of *quo warranto* to oust respondents from transacting business in this State, because of their alleged violation of the statutory and common law against combinations and trusts made in restraint of trade

If this contention of the State is sound, then it cannot be successfully maintained that this court is without jurisdiction in the premises, for the reason that Section 3 of Article VI of the Constitution of 1875, in express terms, confers power upon this court to issue, hear and determine writs of *quo warranto*.

This brings us to the point where we must determine whether or not this is a civil proceeding within the meaning of that section of the constitution; if so, then, clearly, this court has jurisdiction of the cause but, if not, then its jurisdiction should be denied.

The question of the proper procedure in this case and the nature of the complaint charged against respondents in the information are so closely allied and related to each other that it will be necessary to consider the two propositions somewhat together.

It would be useless and would serve no good purpose to go into the learning and distinctions between a proceeding by *quo warranto* and a proceeding by information in the nature of *quo warranto*. The demarcation is well defined and has been long established. Resort, however, is rarely ever had to the former, while the latter has grown into almost universal use. Long before the organization of this State, the writ of *quo warranto* had become almost, if not quite, obsolete; and when our constitution was adopted, proceedings on information in the nature of *quo warranto* were well understood by the bench and bar; and the jurisdiction conferred by said constitutional provision has been construed to mean and include jurisdiction of an information in the nature of *quo warranto*.

State ex rel. v. Stewart, 32 Mo. 379.
State ex rel. v. Vail, 53 Mo. 97.

828 In the discussion of this question, in the case of State ex inf. v. Equitable Loan & Ins. Co., 142 Mo. 325, this court, speaking through that great jurist, Sherwood, J., said, L. c. 335-337:

"At common law, 'the old writ of *quo warranto* is a civil writ, at the suit of the crown; it is not a criminal prosecution. This was the true old way of inquiring of usurpations upon the crown, by hold-

ing fairs or markets, viz: by writs of *quo warranto*. Then information in the nature of a *quo warranto* came into use and supplied their place.' These observations fell from Mr. Justice Wilmot in Rex v. Marsden, 3 Burr. 1817, in the year 1765. See High, Ex. Leg. Rem. Sec. 603. In Blackstone, written in 1758, some seven years before the last mentioned period, it is asserted that the proceeding by *quo warranto* 'is properly a criminal method of prosecution.' Cooley's Black., book 5, ch. 17, p. 262. But whatever the origin of the writ, whether civil or criminal, it is certain now at the present time and for a long period anterior to this, it has been and is but a civil suit. There is a distinction, of course, to be taken, a distinction pointed out by Scott, J., in State v. Ins. Co., 8 Mo. 330, between a writ of *quo warranto* and an information in the nature of a *quo warranto*, but while this is true, yet it is also true even in Blackstone's time, the issuance of the writ itself, owing to its cumbersome length, had long fallen into disuse, which resulted in the modern substitutionary and more speedy method of the filing of *ex-officio* informations by the Attorney-General. Cooley's Black., book 3, chap. 17, p. 262."

"Our Constitution provides, in the third section of its sixth article, that this court shall have power to issue writs of *habeas corpus*, *quo warranto*, *certiorari*, and other original remedial writs, and to hear and determine the same.' Inasmuch as the issuance of a writ of *quo warranto* had not occurred in England for centuries; inasmuch as courts, lawyers and text-writers had been accustomed for hundreds of years to use the expression '*writ of quo war-*
829 *ranto*' as the legal equivalent and synonym of 'information in the nature of *quo warranto*,' it will be presumed that the framers of our Constitution were not unmindful or ignorant of such a common form of expression and the meaning which it bore, and, therefore, when they used the words 'writ of *quo warranto*,' they intended thereby only to convey in abbreviated form the meaning that phrase had for so long a period and so continuously been employed to convey, to-wit: "information in the nature," etc."

"Since writing the above it has been found that in other stated possessing organic laws like our own, similar conclusions have been reached. State vs. Railroad, 34 Wis. 187, and cases cited; State vs. Gleason, 12 Fla. 190, and cases cited; High's Ex. Leg. Rem., Secs. 610, 611."

Continuing, in the discussion of the proposition as to whether or not an information in the nature of a *quo warranto* could be sustained against a corporation for misuse and abuse of its franchise by reason of its failure to comply with a statute, when the Legislature had prescribed certain penalties to be imposed in other proceedings for such violation, he said:

"And the jurisdiction of this court in this regard being conferred by the Constitution, it is beyond the power of the Legislature to take it away, and it will not be intended that a legislative enactment was designed to take such jurisdiction away, although such enactment should confer another and distinct remedy upon some inferior court or board. State vs. Allen, 5 Kan. 213; State vs. Massmore,

14 Wis. 115; Kansas vs. People, 4 Neb. 509; 19 Am. & Eng. Ency. of Law, 664; People vs. Bristol Co., 23 Wend. 222; People vs. Hillsdale Turnp. Co. Ib. 254; State vs. Baker, 38 Wis. 71; High Ex. Leg. Rem. Sec. 615; 2 Spelling Ex. Rlf. Secs. 1772, 1873. In consequence of this well recognized principle, sections 7 and 8 of the laws of 1895, pages 31 and 32, in relation to the duties of the supervisor of building and loan associations, to institute proceedings in the circuit court against a delinquent building and loan
830 association, and that such proceeding shall be conducted by the Attorney General, cannot abate the jurisdiction conferred on this court by the Constitution, nor deprive the Attorney General of his common law and inherent powers to file *ex-officio* informations, as in the present instance."

The statutes under which the respondent in the case just mentioned was organized and doing business imposed upon it certain penalties for violating such statutes; and also provided that if any such company should violate the provisions of its charter or laws of the State, the supervisor of building and loan associations "shall institute proceedings in the circuit court of the city or county in which such association has, or had, its principal office, to enjoin or restrain such association from the further prosecution of its business, either temporarily or perpetually, or for such injunction and dissolution of such association and the settling and winding up of its affairs, or for any and all of said remedies combined, as the supervisor may deem necessary."

Rev. Stat. 1899, Sections 1385, 1392 and 1393.

It is thus seen that those sections of the statutes are just as full and explicit, in prescribing penalties, forfeitures and remedies for their violation and in designating the court in which those penalties and forfeitures are to be imposed and adjudged, as are the anti-trust laws now under consideration. But, notwithstanding, those ample statutory provisions, this court, in that case, held that an information in the nature of *quo warranto* would lie to oust the respondent therein of its charter rights for violating its charter powers. It was also held therein that this court derived its jurisdiction from the Constitution, and that even though the Legislature had attempted to deprive it of that jurisdiction, by express enactment, it could not have done so, for the reason that such a statute would be unconstitutional and void.

Mr. High, in his consideration of this subject, used the following language:

831 "A corporate franchise is a species of incorporeal hereditament in the nature of a special privilege or immunity proceeding from the sovereign power and subsisting in the hands of a body politic, owing its origin either to an express grant, or to prescription which presumes a grant. It follows, therefore, that the sovereign power has the right at all times to inquire into the method of user of such franchise, or the title by which it is held, and to declare a forfeiture for misuser or non-user, if sufficient cause appears.

or to render judgment of ouster if the parties assuming to exercise the franchise have no title thereto."

High Ex. Leg. Rem. Sec. 648.

The same proposition is announced by Clerk and Marshal in their work on private corporations, paragraph 314*b*, in the following language:

"As a general rule, however, the charter of a private corporation will be forfeited, in proper proceedings by the State, for any wilful or fraudulent misuser or abuse of its franchise which injures or menaces the interests or welfare of the state or of the community in which it transacts business, whether the misuser or abuse consists in the exercise of a franchise or power not conferred upon the corporation by its charter, or in the violation of prohibitions in its charter, or in violations of prohibitions in general laws to which it is subject, or in the violation of established principles based upon the ground of public policy."

And in State ex rel. v. Gas Company, 153 Indiana, 483, l. c., 486, 487 and 489, the right of the State to a forfeiture on account of the participation in a combination in restraint of trade, is announced in the following language.

"Where, however, the facts disclose that a corporation has failed in the discharge of its corporate duties, by uniting with others in carrying out an agreement, the performance of which is detrimental or injurious to the public, it thereby may be said to offend against the law of its creation, and consequently forfeits its right
832 longer to exercise its franchise and is subject to a judgment of ouster."

"Corporations are recognized as creatures of the law, and they certainly owe obedience thereto, and when they fail to perform duties which they were created to discharge and in which the public have an interest, or where they do unauthorized or forbidden acts, the State unquestionably has the right, and it is its duty, to object, and it may interpose by information, and wrest from the offending corporation its franchises. Beach, supra, Secs. 840 and 841; Cook on Stock and Corp. Law, Sec. 635; People v. Dashaway Assn., 84 Cal. 114."

The authorities affirm, as a general rule, that, if the act complained of, by its results, will restrict or stifle competition, the law will regard such act as incompatible with public policy, without any proof of evil intent on the part of the actor or actual injury to the public. The injury is not as to the degree of injury inflicted upon the public; it is sufficient to know that the inevitable tendency of the act is injurious to the public. Central Ohio, etc. Co. vs. Guthrie, 35 Ohio St., 666; Swan vs. Chorpenning, 29 Cal., 182; State vs. Standard Oil Co., 49 Ohio St., 137; Gibbs v. Smith, 115 Mass. 592; Richardson vs. Buhl, 77 Mich. 632; Pacific Co. vs. Adler, 90 Cal. 110; Beach on Monop. and Ind. Trusts, Sec. 82."

In the case of State ex Inf. vs. Delmar Jockey Club, 200 Mo. 34, this same question came before this court. In that case a forfeiture of the charter was asked by the Attorney General, because the Club had so conducted its affairs as to violate the criminal laws of

the State against book-making and pool-selling. In that case, as in the case at bar, counsel for respondent contended that in view of the fact that the statutes prescribed penalties for their violation, that constituted the sole remedy for their redress, or that there must be a conviction under the statute for its violation before a judgment of forfeiture could be declared against the corporation.

In the discussion of that case this court said, l. c., 50, 51 and
833 55: "It is apparent that this decision is not an authority for the contention of the corporation is not subject to an action of *quo warranto* to oust it of the franchises conferred upon it for a misuser or perversion of them, or unlawful or wrongful acts committed by its agents in pursuance of the authority derived from its charter. The information charges the respondent "acting through its officers, agents, employés and representatives in charge of its business", engaged in the acts of the misuser charged against it in the information. It will thus be seen that the unlawful act charged is not against the officers, agents, employés and representatives of the corporation, but against the corporation itself. There can be no doubt that a corporation may be proceeded against by *quo warranto* for a misuser or perversion of the franchise conferred upon it by the State, notwithstanding its officers and agents may at the same time be amenable to the criminal law for offense committed by them in the perversion of such franchise.

If a corporation, through its servants and agents, may be guilty of such abuses of its franchises as will subject it to ouster by *quo warranto*, we can conceive of no reason why such servants and agents, if the acts and abuses committed by them be in violation of the criminal statutes, may not at the same time be prosecuted by indictment or information. The one is not a bar to the other proceeding. Nor are we prepared to give assent to the contention that the defendant corporation could not be held to answer for such wrongful acts until its agents, guilty of the criminal offense, be tried and convicted.

It is argued by defendant that forfeiture will not lie for an illegal act committed by a corporation. It is true that not for every illegal act will the charter of a corporation be forfeited; but the charter of the defendant is a contract with the State that it will use the franchises therein granted; that it will not misuse or pervert those franchises, and that it will not engage in the doing or carrying on
834 any business which is unlawful or immoral. * * *

It is alleged in the information, and admitted by the demurrer, that, during the time indicated, defendant sold pools to and registered bets with minors, which was a violation of law, it having no authority to do so. To make and sell pools and book-bets to minors is expressly prohibited by statute, and any person doing so may be punished as for a misdemeanor. (Sec. 2193. R. S. 1899.) So the defendant was without authority from any source to sell pools to or register bets with minors, and, in doing so, it was exercising a power which it did not possess, the tendencey of which was immoral and to encourage minors in dissipation and vicious habits. Defendant now contends that the portion of the petition which relates to such sales does not state violations of law, because

it is not alleged that the respondent knew at the time that such persons were, in fact, minors. The statute is an absolute inhibition against selling pools or book-bets to minors, and it was entirely unnecessary that the petition should allege that such sales were made to minors, knowing such persons to be minors. It was the defendant's duty to know when sales were made that they were not made in violation of law."

So in the case of Terrett vs. Taylor, 9 Cranch l. c. 51, Mr. Justice Story said: "A private corporation created by the Legislature may lose its franchises by a misuser or *non-user* of them; and they may be resumed by the Government under a judicial judgment upon *quo warranto* to ascertain and enforce the forfeiture. This is the common law of the land and is a tacit condition annexed to the creation of every such corporation." To the same effect are

High on Ex. Leg. Rem., Sections 648 and 649.
2 Spellings on Injunctions and other Ex. Reo. Sections 1812 to 1815.
People vs. Dispensary Co., Laus. (N. Y.) 504.
Bank vs. State, 1 Blackf. (Ind.) 267.
5 Thompson on Corps. pp. 6615-16. 10 Cyc. p. 1281.
Angell and Ames on Corps. Sec. 774.

835 It is thus seen that a corporation can so offend against the laws of the State as will justify the Attorney General in proceeding against it by information in the nature of *quo warranto* to forfeit its corporate franchise; and these offenses may be against the common law as well as against the statute laws of the State.

And it is wholly immaterial, and the corporation cannot justify or defend its conduct in that regard by a plea that such conduct was a violation of the criminal laws of the State, by which it and its officers and agents are rendered amenable to the penalties and punishments thereof.

In other words, the laws of the State authorize and direct the Attorney General to institute civil proceedings by information in the nature of *quo warranto* against any corporation to annul its charter and forfeit its franchises whenever it has by misuser, non-user or usurpation of power so conducted itself as to violate the laws of its being or the criminal laws of the State. If, upon trial, the corporation is found guilty, a decree of forfeiture must go, and the court has the power, in addition, to impose penalties for such violations of the laws as it may deem proper. This, however, does not proceed upon the theory that the corporation has been guilty of a crime and that it is being punished therefor; but upon the idea that there is an implied or tacit agreement on the part of every corporation, by accepting its charter and corporate franchises, that it will perform its obligations and discharge all its duties to the public, and that by failing to do so it commits an act of forfeiture which may be enforced by the State in the manner before suggested.

State ex. inf. vs. Delmar Jockey Club, 200 Mo. l. c. 70.

In addition thereto the Legislature has the unquestionable power and authority to declare the acts which will work a forfeiture of the

charter, shall also constitute a crime, and subject the corporation and its agents and servants to punishment under the criminal laws of the State.

Stockwell v. United States, 13 Wall. 531.

Waters-Pierce Oil Company vs. State of Texas, Texas Court of Civil Appeals, not yet reported.

State ex inf. vs. Delmar Jockey Club, 200 Mo. l. c. 50 to 55.

836 It must, therefore, follow from what has been said, that this is not a criminal prosecution as contended for by respondents; nor is the procedure provided for in section 8971 Rev. Stats. 1899, the exclusive remedy available to the state to correct abuses and usurpation of powers by corporations doing business in this State.

We are, therefore, clearly of the opinion that this court has jurisdiction over the cause, and to hear and determine the same.

II.

It is insisted by the informant that a violation of section 8978 by a corporation constitutes a misuse, abuse or usurpation of franchises, notwithstanding the fact that the law fixes penalties and provides a mode of procedure for such violation.

This proposition is closely related in some respects to the one disposed of in paragraph one of this opinion, and much of what was there said applies with equal force in support of the proposition now in hand, especially that portion holding a corporation will forfeit its franchises by a continuous violation of any of the laws of the state.

But, independent of that holding, it is also clear from reading Articles I and II of Chapter 143 of Rev. Stat. of 1899, together that it was the intention of the Legislature to have the franchises of all corporations declared forfeited if they should violate either or both of said articles.

This court, in the case of Sales vs. Barber Asphalt Paving Co., 166 Mo. l. c. 677 and 678, held, and quoted with approval the following language from Mr. Sutherland: "All consistent statutes relating to the same subject, and hence briefly called statutes *in pari materia*, are treated *prospectively* and construed together as though they constituted one act. This is true whether the acts relating to the same subject were passed at different dates, separated by long or short intervals, at the same session or on the same day." (Sutherland Stat. Construct., Sec. 283.)

837 And "A statute must be construed with reference to the system of which it forms a part. And statutes on cognate subjects may be referred to though not strictly *in pari materia*." (Id. sec. 284.)

Further on, the learned author discussing and discoursing upon the same subject, says: "Where enactments separately made are read *in pari materia* they are treated as having, in the minds of the enacting body, parts of a connected whole though considered by such a body at different dates and under distinct and varied aspects of the common subject. Such a principle is in harmony with the actual practice of legislative bodies and is essential to give unity to the laws

and connect them in a symmetrical system. Such statutes are taken together and construed as one system, and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy and was intended to be consistent and harmonious in its several parts and provisions: For the purpose of learning the intention, all statutes relating to the same subject are to be compared and so far as still in force brought in harmony, if possible, by interpretation though they may not refer to each other after some of them have expired or been repealed." (Ib. sec. 288.)

This same canon of construction was approved and adopted by this court, in banc, in the case of State ex rel. v. Patterson, 105 Southwestern Rep. 1048, l. c. 1052.

In Dowdy v. Wamble, 110 Mo. l. c. 283, it was said: "There are few guides to construction more useful than that which directs attention to the prior condition of the law to aid in determining the full legislative meaning of any statutory change thereof."

In Gabriel v. Mullen, 111 Mo. 123, it was said: "In construing any statute it is proper and often useful to consider the state of the law existing at its enactment as casting light on the intended scope of the change made by it."

838 In the case of Humphries v. Davis, 100 Ind. l. c. 284, it was said by Elliott, J.: "A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to furnish in itself all the light needed for its construction. It is proper to look at other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted. (Citing authorities.) As it was said in * * * 'Construction has never been a potent agency in harmonizing the operation of statutes with equity and justice. Statutes are to be so construed as to make the law an uniform system, not a collection of divers and disjointed fragments. When this principle of construction is adopted, 'an enactment of to-day has the benefit of judicial renderings extending back through centuries of past legislation.' Bishop Written Laws, section 242*b*. 'A statute, says the author just referred to, 'must be construed equally by itself and by the rest of the law. The mind of the interpreter, if narrow, will stumble. The complete doctrine, resulting from a bringing together of its parts, is that all laws, written and unwritten, of whatever sort, and at whatever different dates established, are to be construed together, contracting, expanding, limiting and extending one another into one system of jurisprudence as nearly harmonious and rounded as it can be made without violating unyielding written or unwritten terms.' Bishop Written Laws, section 11[1], 86."

If we apply this rule of statutory construction to said articles one

and two, then the legislative intent regarding this matter is made perfectly clear. Those two articles are two of the four articles which constitute Chapter 143 of the Rev. Stat. of 1899, and the title is "Pools, Trusts and Conspiracies," and the respective title of each article is as follows:

"I. Pools, Trusts and Conspiracies."

839 "II. Agreements to regulate prices and limit trade."

"III. The testimony in proceedings against trusts, etc."

"IV. Taking testimony before institution of proceedings."

All of these articles are germane to the title of said Chapter 143, and each and every word, line and section thereof are directed against the formation and maintenance of pools and trusts and providing a mode for their destruction.

Section 8965 is intended to prohibit combinations to regulate or fix prices and to maintain them when so fixed; while section 8966 prohibits combinations to lessen competition by dealing in one article under an agreement that no competing article shall be dealt in.

Section 8971 prescribes a mode by which corporations created or doing business in this State shall forfeit their charters and licenses to do business herein by violating any of the provisions thereof, and is substantially as follows:

SECTION 8971. Any corporation created or organized by or under the laws of this State which shall violate any of the provisions of this article, shall thereby forfeit its corporate rights and franchises and its corporate existence shall, upon proper proof being made thereof, in any court of competent jurisdiction in this State, be and by the court declared forfeited, void and of non-effect and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any of the provisions of the preceding sections of this article shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this State, its right and privilege to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof, that any person who has been acting as agent of such foreign corporation in transacting its business in this State has been, while acting as such agent, and in the name, behalf or interest of such foreign corporation, vio-

840 lating any provision of the preceding sections of this article, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company also the Superintendent of Insurance Department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

And Section 8978 declares every pool, trust and agreement made and entered into to fix and maintain prices to be illegal, and is substantially as follows:

SECTION 8978. Every pool, trust, agreement, combination, confederation, understanding or conspiracy entered into or created or

organized by any person or persons to regulate, control or fix the price of any article or articles of manufacture, merchandise, commodity, etc., or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations, conspiracies or pools made, created entered into or organized by any person to fix the amount or limit the quantity of any article of any kind whatsoever, or of any article of manufacture, commodity, etc., are hereby declared illegal. If any two or more persons who are engaged in buying or selling any articles of commerce, merchandise, commodity, etc., shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or persons any such article or thing aforesaid, for the reason that such person or persons is not a member of or a party to such pool, trust, combination, confederation, association or understanding, shall be guilty of a violation of this article.

If, according to the rule of construction hereinbefore quoted, section 8971 is to be "treated prospectively" and construed together with section 8978, "as one act." then we must read the former section into the latter, and by so doing we have express statutory authority for holding that respondents would be guilty of misuse, abuse and usurpation of power, by entering into agreements to regulate prices, control *of* limit trade, as denounced by section 8978.

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This construction is in harmony with a long and unbroken line of decisions in this and other states:

State ex rel. v. Patterson, supra.

The respondents contend that the statutes under consideration are highly penal, and should for that reason be strictly construed, and that the contention of the informant should not be concurred in by the court; and they cite many authorities in support of their contention.

While it is true these sections of the statute provide for forfeitures of charters and the revocation of licenses of corporations to do business in this state, yet they are not in derogation of the common law, as the authorities heretofore cited firmly establish, but are intended to be in aid of and supplementary thereto, highly salutary and remedial in their purpose; and the mere fact that heavy losses may be sustained by respondents in consequence of an adjudication of ouster should not influence or deter the court from declaring the intention of the legislature as contained in those articles.

State v. Williams, 8 Texas, 265.
In re Green, 52 Fed. Rep. 104.
State ex inf. v. Standard Oil Co. 194 Mo. 124.
Railway v. Commonwealth, 35 Southern Rep. 129.
United States v. Traffic Ass'n, 166 U. S. 290.
Heim Brewing Co. v. Belinder, 97 Mo. App. 64.
United States v. Northern Securities Co. 193 U. S. 197.

This court and many others have held that remedial and salutary statutes though in derogation of the common law should be construed and enforced according to the plain intention of the
842 legislature, although heavy damages were prescribed and penalties imposed for their violation.

Yall v. Snow, 201 Mo. 511, and cases cited.

Johnson v. Snow, 201 Mo. 450.

And as said by Graves, J., in the Delmar Jockey Club case, supra, l. c. 70:

"These proceedings are no longer recognized as criminal proceedings and have not been so recognized since the early days of the common law, but we have continually imposed what are called 'fines', a term no doubt coming down from the time when the proceedings were looked upon as a criminal proceeding. The implied contract with the state, when the charter was given respondent, was that it would exercise and use the granted rights; that it would use none other, or stated otherwise, that it would not usurp other rights; that it would rightfully use the powers granted, and not misuse them. A wilful failure of either of these covenants with the State will authorize a forfeiture, and why not a fine? We forfeit for nonuser and why? Because there has been failure to perform the obligations to the state; because there has been a violation of the contract with the State. Misuser is likewise a violation of the implied agreement with the State. So is usurpation. Each are but violations of the implied contract with the State, and for these violations we declare forfeitures. Why not fix penalties and punishments in the one as in the other? The gist of each in *quo warranto* is the wilful violation of the rights of the State under the implied contract, and not the violation of some criminal law, for we do not try criminal cases and affix criminal punishments in *quo warranto* proceedings. The violation of a corporation's contract with the State by misuser or usurpation may be evidenced by the fact of the violation of some statute, criminal in character, but in this kind of proceeding we try the right of the corporation to further hold its franchises not the question of finding its guilt or innocence under the statute and fixing punishment permitted by the statute. It is the only
843 way the State has of preventing the abuse of the confidence it has reposed in these corporate creatures which are of its own making. This abuse may be by nonuser, misuser, or usurpation, but, in our judgment, the State has the same rights in each event, both as to the forfeiture and the fine."

Also see

State Ex Inf. v. Equitable Loan & Inv. Ass'n, 142 Mo. 325.

State Ex inf. v. Armour Packing Co. 173 Mo. 356.

The Waters Pierce Oil Company v. State of Texas, Texas Civil Court of Appeals, not yet reported.

Stockwell v. United States, 13 Wall. 531.

The Texas case just cited was predicated upon statutory provisions very similar to the statutes of this State regarding pools, trusts and combines made in restraint of trade. There, a civil suit

was instituted by the State against the Waters-Pierce Company, seeking to recover penalties prescribed for violating the statutes, and also praying for a forfeiture of the company's license to do business in the state.

The defendant there, as in this case, contended that the violation of the statute constituted a crime and that it should be prosecuted therefor under an indictment or information, and that a civil action would not lie against it in the first instance for such violation. The court did not sustain that contention, but, upon the other hand, expressly held that the action was a civil suit, and assessed the penalties at $1,625,900., and rendered a judgment revoking defendant's license to do business in the state, as prayed.

We are, therefore, of the opinion that this is a civil suit and not a criminal proceeding, and that full force and effect should be given to the statutes and not emasculated by technical constructions placed upon them by the courts.

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III.

Respondents contend that there is a misjoinder of parties defendant in this cause.

Their position is, that one corporation cannot be joined with another when charged in *quo warranto* proceedings with abuse or usurpation of corporate rights, for the reason that such a charge relates to the individual contract between it and the state.

That is no longer an open or debatable question in this state. It has been fully and firmly determined against respondents' contention in the following cases:

State ex inf. v. Firemen's Fund Ins. Co. 152 Mo. 1,
State ex. inf. v. Armour Packing Co. et al. 173 Mo. 356.
State ex inf. v. Continental Tobacco Co. et al. 177 Mo. 1.

IV.

The next contention of respondents is, that the information does not charge them with forming a combination to maintain prices of their commodities, but only charges them with combining to regulate, control and fix prices.

If we correctly understand respondents, their position is, that there is a difference between a combination to *maintain* prices and a combination to *fix and control* prices. They seem to concede the former is within the inhibition of the statute, and that such a combination would be unlawful, but deny that the latter is within its purview, and, therefore, such a combination is not prohibited by sections 8965 nor 8966.

While it is true neither of those sections prohibit combinations to fix, regulate or control prices, yet section 8978 does in express terms prohibit all such combinations and agreements; and, if we are correct in the conclusions reached in paragraph two of this opinion, wherein we held that all of these statutes must be construed together, as one act, then it is wholly immaterial whether the inhibition mentioned is contained in section 8965, 8966 or in 8978. If

contained in any one of the three, that would be sufficient; and if violated by the respondents, they would be subject to the
845 forfeiture therein prescribed. This is so plainly the meaning of the statutes, it is not deemed necessary to review the number of authorities cited by opposing counsel in support of their respective positions.

The legislature was dealing with a grave question of great importance, one that had challenged the minds of the ablest and best men of the country, both in and out of legislative halls, and one which affected the prosperity and welfare of the entire people; and, if unrestrained, might have threatened the very foundations of our form of government. With that aspect of the question before the minds of the lawmakers, it is not to be presumed, in the absence of express legislation to the contrary, that they intended to enact laws which mean and are susceptible of the refined and technical construction which has been placed upon them by the able and learned counsel for respondents. No fairminded, unbiased man can read Chapter 143 of Rev. Stat. of 1899, without logically coming to the conclusion that it was the intention of the legislature to smite with a mail hand all corporations and individuals doing business in this State which persistently or knowingly violated any of the provisions thereof; and pointed out to the courts in no uncertain terms what to do in case they found any such corporation or persons offending against the law.

It is also contended by counsel for respondents, that the allegations of the information of the existence of the combination complained of are not sufficient to constitute a cause of action against them.

If we correctly understand counsel, their contention is that the information in this case should be drawn with the same rules of strictness which are applicable to criminal indictments and information.

In other words, they contend that the information should state the facts which constitute the pool, trust or combination; and not make the charge in general terms.

It is the formation of and entering into the pool, trust or
846 combination that constitutes the usurpation of corporate powers; and in such cases, according to the text writers, and adjudications, all that is necessary to be stated in the information is a general allegation of the facts constituting the misuser, nonuser or usurpation.

When the state challenges the authority of a corporation to do certain things, it must either deny the charge, or, if it is exercising the authority complained of, then it must justify its conduct by showing that it possesses that power and authority under its charter; and the state is not required to allege and prove the facts in detail constituting the mode or manner in which it is violating the law and usurping powers not granted to it by its charter.

In the case of State ex inf. v. Missouri Pac. Ry. Co. et al., Missouri Supreme Court, in Banc, not yet reported, this court said:

"In overruling the demurrers in these cases the court does not

decide any of the questions touching the merits which were discussed in the oral arguments. The only point decided is that these informations are sufficient to require the defendant to answer the charges made by the Attorney General against them, either by specifically denying the charge or stating the facts which in the opinion of the defendants justify them in doing what they are charged with doing.

The pleadings in a proceeding of this nature are not governed by the rules of pleading stated in the Code of Civil procedure; the only provision of the code that is extended to a proceeding in *quo warranto* is contained in section 675 R. S. 1899 relating to amendments.

An information in the nature of *quo warranto* filed by the Attorney General is not of the character of a petition in an ordinary case either in law or equity; it is the official call of the Law Officer of the State on the corporation or individual to show what authority it or he is assuming to exercise particular franchises. The rules of pleading in such cases are thus stated in 17 Ency. Pl. &
847 Pr., 457-458: "The office of an information in the nature of a *quo warranto* is not to tender an issue of fact but simply to call upon the defendant in general terms to show by what warrant or charter the privilege, franchise or office is held or exercised.

Where the state calls upon one to show cause by what authority he exercises a corporate franchise or public office, the allegation by the attorney general of intrusion or usurpation may be of the most general character, while the defendant is required to set forth particularly the grounds of his claim and the continued exercise of his right, except where by statute the pleadings are more nearly assimilated to those in other civil actions." In this state we have no such statute. The same author at p. 467, says: "When one is called upon by the state to show warrant or authority for the exercise of a franchise or office pertaining to the state, the defendant must, by his plea, answer or return, disclaim all right to the franchise and deny its usurpation, or allege facts which, if true, will invest him with the legal title of pleading the charter or legislative grant of the franchise sought to be forfeited or seized, or by pleading directly and positively all the facts necessary to establish the title to the office which the defendant is called upon to justify; and in the absence of such an answer the state will be entitled to a judgment of ouster." There is no such plea as a general denial in a case of this kind.

If these defendants are not doing what the law officer of the State, in a general way charges them with doing, let them specifically deny the charge; if they are doing it or something like it and think they are justified in so doing, let them specifically state it in their answers.

These demurrers go mainly on the idea that the informations are not sufficiently specific in detailing the facts which constitute the charge of usurpation; that idea is out of place in this kind of
848 proceedings; the state calls on these corporations to answer, and the duty of pleading specifically the facts rests on them.

In these cases the Attorney General has (doubtless induced by a

practice heretofore tolerated) made more statements of facts than necessary, but they are treated as surplusage.

2 Spelling on Extra Legal Prin., sections 1851, 1853, 1855.
People v. Railroad Co. 12 Mich. 389.
17 Ency. Pl. & Pr., pp. 457, 458 (2 Ed).
Commonwealth v. Eastman, 1 Cushing 190.
State v. Parker, 43 N. H. 84.
State ex inf. v. Delmar Jockey Club, 200 Mo. l. c. 55.
United States v. Gardner, 42 Fed. Rep. 831.
Landringham v. State, 49 Ind. 186.
Hazen v. Commonwealth, 23 Pa. St. 364.
Cole v. The People, 84 Ill. 216.

And especially is this rule applicable in this state when such proceedings are civil in their nature; and which are not required to be stated with the same technical strictness with which crimes must be charged.

State ex rel. v. Loan Co. 142 Mo. 325.
State ex inf. v. Delmar Jockey Club, 200 Mo. 32.

But waiving that point for the present and conceding that this proceeding is in the nature of a criminal prosecution, and that the pleader should be held to the same strict rules of pleading as is required in charging a criminal conspiracy, still we are of the opinion that the information states a good cause of action, for the reason that acts with which the respondents are charged are unlawful.

In such cases the rule is, that "If the act with which the conspirators combined to perform is unlawful, it is unnecessary to set out in the indictment the means to be employed in accom-
849 plishing it. But if the end in view is lawful or indifferent, and the conspiracy only becomes criminal by reason of the unlawful means whereby it is to be accomplished, it becomes necessary to show the criminality by setting out such unlawful means."

Ency. Pl. & Pr., Vol. 4, pp. 713, 714, 716, 717.
C. W. & V. C. Co. v. The People, 214 Ill. 421.

Besides this, there are no specific objections made to the sufficiency of the information; all of them are general in their character, and leave the court in the dark to conjecture as to what are the infirmities. But after a careful reading and re-reading the information, and testing its sufficiency by all known rules of pleading, we have been unable to detect any defect in any of its charging parts.

The sufficiency of the information was sustained when the case was here before, 194 Mo. l. c. 130, and we have no reasons to change our minds upon the question.

We are, therefore, of the opinion that the information states a good cause of action.

V.

The constitutionality of the statutes upon which this proceeding is predicated is challenged by counsel for respondents for several reasons, which will now receive consideration.

(*a*) Their position is that those sections are in violation of the first section of the 14th Amendment of the Constitution of the United States, in that while they denounce the same acts,
850 whether committed by individuals or individuals and corporations, they impose upon the latter a greater and different punishment from that imposed upon individuals.

In one sense that may be true, but it is not true in a legal sense. A corporation is a legal fiction—a creature of the law. It accepts its charter and corporate franchises with a tacit agreement or understanding that it will exercise the powers granted to it by the state, and none other; and that if it misuses those powers, or usurps powers not so granted, that it will surrender or forfeit its charter, with all corporate franchises. That the state has the power to enforce this agreement, or law of forfeiture, is not questioned by respondents, but they insist that it is a different and greater punishment than is imposed upon an individual for the commission of the same offense. In answer to that, it may be said that an individual is a natural person, created by his Maker, and not by law, and, therefore, has no franchises to exercise or to forfeit, consequently the same punishment, if you so term it, could not, in the very nature of things, be measured out to the individual which should be measured unto a corporation.

While it is true to forfeit the charter of a corporation for usurpation of power is equivalent to taking its life, as it were; but we suppose it will not be seriously argued that because the statute does not demand the life of the individual, as it does that of the corporation, as a punishment for his violation of the law, that the law should and must be declared unconstitutional and void upon that ground. And, upon the other hand, where a statute denounces certain acts, whether committed by individuals or corporations, or both, it should not be declared unconstitutional because it provides for imprisonment of the former and a fine, or forfeiture of the latter's charter, as punishments for their violation of the statute. But if the contention of counsel for the respondents is sound, then any individual could form an unlawful combination in restraint of trade with any corporation, and when proceeded against
851 for such unlawful conduct either one or both of them could interpose the unconstitutionality of the statute, because the punishment prescribed against each is not the same but different. And we might add, that if their position is tenable, then the Legislature would be powerless to provide for the imprisonment of the one because it could not imprison the other; nor could it provide for the forfeiture of the charter of the corporation, because the individual would have none to forfeit, ergo there is no punishment the Legislature could provide, excepting a fine against each. Such a contention regarding the proposition here involved if followed to its logical conclusions would lead to an absurdity, and, at the same time, shows the unsoundness of respondents' contention.

Nor do said sections of the statute deny respondents' equal protection of the law within the meaning of the 14th Amendment of the Federal Constitution.

It is not the object or purpose of that provision of the Constitution to prevent legislation which embraces within its provisions all persons or things which naturally and reasonably belong to the same class and similarly situated and where the statute must operate equally and uniformly upon all such persons or things of that class.

Andrews v. Fidelity Ins. Co. 168 Mo. 151.
Waters-Pierce Oil Co. v. State of Texas, 19 Tex. Civ. App. 14.
Railway v. Mackey, 127 U. S. 209.
Barbier v. Connerly, 113 U. S. 31.
Railway v. Mathews, 165 U. S. 25.
Plessy v. Furgeson, 163 U. S. 550.
G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150.

The purpose of that provision was to prevent legislation which embraces within its provisions only a portion of the persons or things which rationally belong to the same class and who are similarly situated.

Railway v. Ellis, 165 U. S. 150.

852 Nor do we agree with respondents in their contention that those statutes are violative of that constitutional provision, in that they unjustly discriminate against property by embracing commodities only and not including labor, which, it is contended, may also become the subject of a pool or combination

While it is true those statutes are limited in their scope and operation to persons and corporations dealing in commodities, and do not include combinations of persons engaged in labor pursuits, yet it must be borne in mind that the differentiation between labor and property is so great that they do not belong to the same general or natural classification of rights, or things, and have never been so recognized by the common law, or by legislative enactments. They stand upon entirely different footings, and the laws pertaining to the one are entirely different from those pertaining to the other.

Labor has always been considered in the nature of an attribute to man, and partakes more or less of his individuality, and personal liberty, and is inseparable from his person. Labor and labor organizations are controlled and protected by laws enacted to operate largely upon the individuals personally, and not so much as upon the products of their labor, called commodities. While, upon the other hand, commodities are nothing but property, and have no personal connection with the owner whatever.

Legislation affecting property and property rights will in no manner interfere with the personnel of the owner. But that is not true of laws regarding labor, for the reason that the moment you enact laws affecting labor, that moment and by that law you affect the personnel of the laborer. I am not speaking of those laws which are enacted to secure the wages due for labor, but I am referring to the laws that are applicable to labor itself; such as those guaranteeing to the person the right to labor, the right to contract

to labor, and the right to agree upon prices to be paid therefor, as well as those which prevent involuntary servitude, etc.

853 This classification of the laws regarding labor and property has always been recognized, by all nations, in all ages; and those laws which apply to the one have never been considered or looked upon as being special and class-legislation, because they do not embrace both.

Mr. Blackstone, in his masterly treatise upon the common law, starts out by classifying the laws into the rights of persons and the rights of things, and then he treats the laws applicable to each class separately. Our laws are in this day based upon that same classification, and this is the first time I have ever heard it contended that the laws enacted for the one class must embrace the other, otherwise the act would be unconstitutional and void.

Respondents have cited no authority sustaining their contention, and we assume there is none.

In the very nature of things a law could not be enacted which would be equally applicable to persons and things without interfering with the personnel and liberty of the laborer.

The Legislature in enacting these anti-trust laws well knew of this natural classification of commodities and labor, and enacted laws only embracing the former, which in no manner deprives their owners of any of their legal or personal rights, while if they had also embraced labor combinations, they would have entrenched upon the personal rights of the labor-.

While the Legislature might have included labor combinations, yet it did not do so, and the reason, above stated, alone was a sufficient justification for the omission to include labor combinations in the act; to say nothing regarding the general and natural classification of persons and things, which has always been recognized by the law making powers.

854 There is nothing new that can be said upon this subject which would throw any additional light upon it. The authorities above cited are but a few of the many which support the conclusions above stated.

These sections of our statutes embrace all persons and corporations who naturally belong to the same class, and they do not arbitrarily and capriciously, without reason, divide classes or distinguish between classes existing under similar conditions.

(*b*) The constitutionality of sections 8983 and 8984 is also vigorously assailed by counsel of respondents.

In pursuance of those sections, respondents were required by this court to produce certain books and papers belonging to and in their care and custody, before the Master, to be used as evidence in this proceeding; and the latter provides that if the officers or agents of the corporation do not appear to testify and do not produce the books and papers ordered produced by the court, or by the officer authorized to take the evidence, then it shall be the duty of the court, upon proper motion, to strike out the answer, motion, reply, demurrer or other pleadings of said corporations whose officers or

gents are in default, and proceed to render judgment by default gainst said corporations.

When the order was made upon said respondents to produce the ooks and papers, they then assailed the constitutionality of both f these sections of the statutes. In a very clear and able opinion ritten by Lamm, J., this court ruled against the contentions of espondents as regards section 8983, and held it to be constitutional; ut declined to pass upon the constitutionality of section 8984, ecause it was not properly before the court, because none of the espondents had disobeyed the order of the court.

State ex inf. v. Standard Oil Co. 194 Mo. 146 to 150.

We have re-examined the questions there presented and which are renewed here.

855 In so far as what is there said regarding section 8983, it is sufficient to say that we are perfectly satisfied with the reasoning and conclusions there reached; but the objections urged against section 8984 demand further consideration.

In pursuance to the order above mentioned, the respondents produced the books and papers designated therein, and they were introduced and used as evidence in the case. They now renew their objections to the validity of that section, and say it is violative of both the State and Federal Constitutions, in that they produced the books and papers under the threatened penalty of having a judgment of ouster rendered against them.

Counsel for respondents have not pointed out or suggested in what manner, nor have we been able to see how a threatened judgment of ouster could or did in any conceivable way deprive any of the respondents of their property without due process of law, either within or without the meaning of the State and Federal Constitutions. They were clearly served, and were in court, approved and resisted the right and authority of the court to make the order. This was a "hearing", and due process of law within those constitutional provisions. And if, after such hearing, respondents had seen proper to disobey the order and thereby have suffered judgment by default to have been rendered against them, that would have been their privilege and fault, and not the fault of the law; and, if, upon the other hand, they should obey the order, as they did in this case, then the trial would proceed in due course to final judgment upon the merits, as was done here.

In each case they had a trial according to due process of law, which means according to the laws of the land.

Naylor vs. Harrisonville, Mo. Sup. Ct. 105 S. W. Rep. 1074.

Similar statutes to the one under consideration are in force in this state and apply to all litigants, and they may thereby be

856 compelled to testify as witnesses before the court or referee, and be required to produce books and papers in their charge or under their control relative to the issues involved under penalty of having their pleadings stricken out and judgment rendered against them for disobeying any such order of the court.

Rev. Stat. 1899. Sections 709, 710, 737, 738, 739 and 740.

These statutes were first enacted shortly after the organization of the state; and similar statutes exist in almost all the states of the Union, and our attention has not been called to any case which has held any such statute to be unconstitutional.

Independent of what we have here said, the reasons assigned by this court when this case was formerly here for holding section 8983 to be constitutional apply with equal force and logic to section 8984. If the former is valid and authorizes the court to make the order, then it must follow as a necessary corollary that the latter, which empowers the court to enforce its orders by striking out the pleadings, must also be valid.

It would be a foolish thing to argue or hold that the court has the authority under the statutes to make the order and then hold that the court has no authority thereunder to enforce the obedience of such order after it is made.

State ex inf. vs. Standard Oil Co., 194 Mo. l. c. 151.
State ex inf. vs. Continental Tobacco Co. 177 Mo. 1.

(c) Respondents' next insistence is, that because they were compelled by the process of the court to produce testimony against themselves, they must be discharged in this proceeding.

This contention is untenable.

(1) Section 8989 Rev. Stat. 1899, granted immunity to all the witnesses who were produced by respondents and who testified in compliance with the order of the court. No witness can avail himself of section 23 of Article 1 of the Constitution of 1875, nor
857 of the Fifth Amendment of the Constitution of the United States as to giving oral testimony, because said statute grants him immunity from prosecution; nor can he set those constitutional provisions up against an order for the production of books and papers, as the same statute would equally grant him immunity in respect to matters provided thereby.

Hale vs. Henkel, 201 U. S. l. c. 69 to 73.

(2) Nor was it intended by section 11 of Article I of the Constitution, nor the Fourth Amendment of the Constitution of the United States, known as the search and seizure clauses, to interfere with the power of courts to compel the production upon trial of documentary evidence under a *subpœna duces tecum*.

Hale vs. Henkel, supra, l. c. 73.

(3) While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, a corporation is a creature of the state, and there is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers.

There is a distinction between an individual and a corporation; the latter, being a creature of the state, has no constitutional right to refuse to produce its books and papers in court for examination in the trial of a proceeding by the state against it; nor can the officer

in charge of the corporation charged with violation of the statutes plead the criminality of the corporation as a refusal to produce the books.

Hale vs. Henkle, supra, pp. 74 to 76.

The rule above announced has the sanction of the highest court in the land and was applied in a criminal prosecution, and *a fortiori* should the same rule apply to a civil proceeding like the case at bar.

(*d*) It is also contended that these anti-trust statutes violate the provisions of section 8 of Article I of the Constitution of the United States, which gives Congress the power to regulate commerce with foreign countries and among the several states and Indian tribes.

It was not the intention of the Legislature, by the enactment of those statutes to interfere with inter-state commerce, but the
858 clear intention was to prevent the formation and maintenance of pools, trusts and combinations in restraint of intra-state commerce.

The Legislature has no power or authority to prevent respondents from carrying on inter-state trade, for the reason that power is vested in and rests with Congress; but it does possess the power to authorize the courts to forfeit the charters of all corporations organized and existing under the laws of this state for the usurpation of powers not granted to them, or for misuser or non-user of those granted; and it is wholly immaterial whether those corporations are engaged in inter-state commerce or not.

The Legislature also possesses the undoubted authority to revoke or forfeit the license issued to any foreign corporation authorizing it to do an intra-state business in this State. The revocation of such a license in no manner interferes with inter-state commerce. The authority to conduct such business is obtained under the acts of Congress and not by virtue of the laws of the State. A license from the State can neither confer nor take away the authority or right of a foreign corporation to carry on inter-state commerce; and, that being true, we are unable to see in what possible manner the forfeiture of such a license, that is, a license which only authorizes a foreign corporation to do an intra-state business, can possibly offend against section 8 of Article I of the Federal Constitution, which only applies to inter-state commerce.

We are, therefore, of the opinion that this contention of respondents is not well founded.

Nor are we able to concur with the learned counsel for respondents in their contention that sections 8965, 8966, 8967, 8971, 8972 and 8978 of Rev. Stat. of 1899 are void for the reason that they violate section 10 of Article I of the Constitution of the United States which provides that no state shall enact any law which will impair the obligations of a contract.

Clearly that section of the Constitution has no application to a license issued by the State to a foreign corporation to do business herein, for the reason that when it accepted the license, it impliedly, at least, agreed to transact such business under and in obedience to

the laws of this state in the same manner as a domestic cor
859 poration should transact similar business, and that if it vio
lated the laws of the state, then it would thereby forfeit it
rights to such license, in the same manner that the domestic cor
porations would forfeit their charter rights by offending against
the laws.

Orient Ins. Co. v. Daggs, 172 U. S. l. c. 566.
Cooper v. California, 155 U. S. 648.

The mere fact that the licenses granted to the Indiana and Re
public Companies were issued prior to the enactment of some o
all of those sections does not change the legal aspect of the question
because the enactment of those statutes was but the exercise of th
police power of the state, which cannot be contracted away or sur
rendered by legislation. As shown by the numerous authorities be
fore cited, the police power of the state is an inherent power o
sovereignty and cannot be contracted away.

Mugler v. Kansas, 123 U. S. 653.

(*f*) It is finally contended by respondents that sections 8963
8966, 8971 and 8978 are all unconstitutional and void because they
contravene section 1 of the 14th Amendment to the Constitution o
the United States, in this, that they abridge the privileges and right
of respondents to make valid contracts with respect to their busines
and property.

In support of that contention learned counsel for respondent
argue that under that section of the Federal Constitution they had
the legal right to make contracts in reasonable restraint of trade
and that the sections of the statute mentioned prohibit the making
of all contracts in restraint of trade, those that are reasonable as well
as those that are unreasonable and unjust, consequently the statute
must fail.

In answer to that contention it may be said that counsel do not
correctly state the rule of law regarding such contracts. The uni
versal rule is that two or more parties may enter into any lawful
contract regarding any matter, and if that otherwise legal contract
only incidentally limits trade or fixes prices, then that legal con
tract will not be held void on the ground that it incidentally
operated in restraint of trade.

Shawnee Compress Co. v. Anderson, 209 U. S. 423, 434.
860 Phillips v. Iola Cement Co. 61 C. C. A. Rep. l. c. 20.
Whitewell v. Consolidated Tobacco Co., 60 C. C. A. Rep. l. c.
299.

But if the primary purpose of the contract was to limit and
restrain trade, then the contract would be void at common law, and
would not be protected by the constitutional provision mentioned,
however slight that interference or restraint might have been.

But even if that was not the common law, yet there is nothing in
either the State or Federal constitutions which prevents the enact
ment of a statute prohibiting the making of all contracts in restraint
of trade whether reasonable or unreasonable.

The Supreme Court of the United States in discussing that question in the case of Shawnee Compress Co. v. Anderson, 209 U. S. 423, 434, used this language: "And it has been decided that not only unreasonable but all direct restraint of trade are prohibited, the law being thereby distinguished from the common law."

Horner v. Graves, 7 Bing, 735.
Northern Securities Co. v. U. S. 193 U. S., 197.
United States v. Addyson Pipe Co. 85 Fed. Rep. l. c. 282.
State ex rel v. Firemen's Fund Ins. Co., 152 No. 1.

The same is true and may be said of the statutes under consideration they prohibit the making of all contracts and combinations which have for their object and purpose the restraint of trade
861 or the fixing and maintaining of prices; but those sections in no manner denounce as illegal any contract regarding trade which has for its object a legitimate purpose and which only incidentally stifle trade.

While the 14th Amendment prevents illegal infringements upon the liberty of the citizen to contract, and deprives him of his property and imposes restraints and burdens upon him without due process of law, yet that amendment has never been held to prevent the Legislature from the exercise of the general police power of the state. This power extends to many subjects which need not here be enumerated which affect the general welfare and public interest within the purview of that power. In the absence of such power, the citizen would have the absolute authority to contract and the power to hold property as he might deem proper; but under that power the state may enact valid laws requiring each citizen to so conduct himself and so use his property as not to unnecessarily injure others. And as said by the Supreme Court of the United States in the case of Munn vs. Illinois, 94 U. S. 124, "This is the very essence of government, and has found expression in the maxim, *'sic utere tuo ut alienum non laedas.'* Chief Justice Taney in discussing the scope of the police power of the state, in the License Cases, 5 Howard, 583, said:

"are nothing more or less than the powers of government inherent in every sovereignty * * * that is to say * * * the power to govern man and things. Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulations become necessary for the public good."

"The state can now as before prescribe regulations for the health, good order and safety of society, and adopt such measures as will advance its interests and prosperity."

Railway vs. Beckwith, 129 U. S. 29.
State vs. Moore, 104 N. C. 71.

The Court of Appeals of New York, in the case of Brtholf
862 vs. O'Riele 74 N. Y. 571, said: "All property is held subject to the power of the state to regulate or control its use, to secure the general safety and the public welfare. 'We think it is a

settled principle' says Chief Justice Shaw, in Commonwealth vs. Alger, 7 Cushing, 84, 'growing out of the natural or well ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property is held subject to those general regulations which are necessary to the common good and general welfare." Judge Redfield, in a passage often cited with approval, speaking of the police power, says: "By this general police power of the state persons and property are subject to all kinds of restrictions and burdens in order to secure the general comfort, health and prosperity of the state; of the perfect right of the Legislature to do which, no question ever was or upon acknowledged general principles can be made." Thorp vs. Railway, 27 Vt. 140. The police power, so called, inheres in every sovereignty and is essential to the maintenance of public order and the preservation of mutual rights from disturbing conflicts."

And as said by the supreme court of Texas in the case of Waters-Pierce Oil Co. vs. State of Texas, 19 Texas Civil App., l. c. 11 and 12: "The state in the exercise of this power in the selection of remedies looking to the suppression of evils harmful to its people may apply them to the most sacred contracts and to the uses of property of every description, not in the way of an arbitrary spoliation or confiscation under a capricious exercise of the police power, but a useful regulation in the interest of the public welfare. Cooley Const. Lim. (6 Ed.) 707-720.

In enumerating the subjects which may be acted upon by the state in the exercise of its police power, Mr. Tiedeman, in his valuable work on Limitations of Police Powers, names combina-
863 tion, in restraint of trade, section 96; and as said in United States vs. Freight Association, 166 U. S. 322, "Manufacturing or trading companies may also affect prices by joining together in forming a trust or other combination, and by making agreements in restraint of trade and commerce, which, when carried out, affect the interest of the public.

This is certainly a just acknowledgment of the power, for there are few acts which individuals may engage in that are more harmful in their effects upon the interests of the public generally than trusts and combinations concerning the commodities useful to mankind.

The right of the individual must yield to the public wants, and his conduct and all property held by him is subject to the control of the state, to the end that he shall so demean himself and use his property with as little hurt and injury to the public as possible. As said in Munn vs. Illinois, 94 U. S. 113, while power does not exist with the whole people to control rights that are purely and exclusively private, government may require each citizen to so conduct himself and so use his own property as not unnecessarily to injure another.

Mugler vs. Kansas, 123 U. S. 660.

The statutes in question are bottomed upon those police powers which are inherent rights of sovereignty; and in pursuance thereof the Legislature enacted them for the purpose of suppressing the many evils which had grown up under the widespread system of trusts and combinations extending over the entire country, including this state, and to the great injury and detriment of the people.

The necessity and wisdom of such statutes are vouched for by their enactment in almost every state in the Union as well as by the Congress of the United States, and by the many decisions of the various courts throughout the country sustaining their constitutionality and giving force and efficacy thereto.

Such statutes are enacted for the purpose of restraining the unbridled liberty of the citizen in his conduct and use of his
864 property, and no such reasonable restraint imposed by statute has ever been held unconstitutional because it deprived the citizen of his life, liberty or property without due process of law; but, upon the other hand, the courts have uniformly held all such laws to be a wise, just and valid exercise of the police powers of the state.

In the case of Mugler vs. Kansas, 123 U. S. 653, the Supreme Court of the United States went so far as to hold a statute of that state valid which deprived the citizen of all rights to manufacture and sell intoxicating liquors in the state. In that case this question was reviewed at great length and discussed with great learning and ability, and it was there held that the statute was a reasonable and a valid exercise of the police powers of the state, and that absolute prohibition did not deprive him of his rights without due process of law.

Legal regulations and restraints imposed upon the use of property and the authority to contract in reference thereto do not deprive the owner of his property or contract rights without due process of law.

Railway vs. Mathews, 165 U. S. 23.
Railway vs. Hume, 115 U. S. 519.
Barbier vs. Connoly, 113 U. S. 31.
Wolston vs. Nevin, 128 U. S. 582.
Railway vs. Gibbs, 142 U. S. 387.
State ex inf. vs. Firemens' Fund Ins. Co., 152 Mo. 1.
State ex rel. vs. Schlitz Brewing Co. 104 Tenn. 515.

It was contended in the case of State ex inf. vs. Firemen's Ins. Co., 152 Mo. l. c. 46-47, that the anti trust law was unconstitutional because it prohibited "a reasonable adjustment and maintenance of rates of premium to be charged for insurance." The court, after discussing the purpose and object of such legislation, says, l. c. 46-47:

"Such laws have not only been adjudged constitutional by the
865 Supreme Court of the United States, but the principles they announce have been expressly sanctioned by the Supreme Courts, of many other states." (citing cases from most of the states of the Union).

In answer to the contention that such acts restrain the defendant's right of contract, the court said, l. c. 47:

"There is no such thing in civilized society as the unrestrained power to contract. Every man surrenders some of his individual rights when he associates with or becomes a part of any society or government, and the power of the government is complete, so that, while according to every man the fullest possible liberty to do what he pleases with his own, he must not interfere with the similar rights of others. This principle underlies and runs through all governments and societies, and it is the corner stone of the police power of the State."

The constitutionality of our anti trust laws was further recognized in the Beef Trust case and was expressly affirmed in State ex inf. vs. Continental Tobacco Company, 177 Mo. 1.

Also State ex rel. Brew. Co., 104 Tenn. 715.

Waters Pierce Oil Co. vs. State, 19 Texas Civ. App. 1.

The construction of such statutes should be made in a liberal spirit as is said by this court in the case of State ex. inf. vs. Standard Oil Company, 194 Mo. l. c. 148. "We feel at least, on solid ground on the proposition that statutes leveled against monopolies are buttressed upon the wisdom of the common law, and this court, constrained and enlightened by events of current history, is not required and does not deem itself invited to approach the interpretation of such statutes with a hostile or sour predisposition to drive a coach and six through them, but, on the other hand, while sedulously protecting the rights and liberties of the individual from insidious approaches, under whatever artful guise, we should, at the same time, not lose sight of the rights of the community, and should endeavor to advance the beneficent purpose underlying such laws. (State ex inf. vs. Armour Packing Company, 173 Mo. 356) where it can be done without doing violence to constitutional provisions."

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While there may be some provisions in said Articles one and two of Chapter 143, which, if considered alone, might lend color and plausibility to respondents' contention, that they prohibit the making of certain contracts which are proper; but when all the sections of those articles are read and construed together, then that objection to their validity fades away and there is not a vestige of color remaining upon which to base such a contention.

Any strained or extreme construction placed upon a statute might lead to a holding that it was unconstitutional, but no statute should receive such a construction.

As is said by the Supreme Court of the United States in Jacobson vs. Massachusetts, 197 U. S. 11, l. c. 38-9, in discussing a similar question:

"Extreme cases can be readily suggested, but ordinarily such cases are not safe guides in the administration of the law. All laws should receive a sensible construction and general terms should be so limited in their application as not to lead to injustices, oppression or absurd conclusions. It will, therefore, be presumed that the

egislature intends exceptions to its language which would avoid esults of that character. The reason of the law in such cases should revail over its letter."

The conclusions above reached are supported by the following ases:

Heim Brewing Co. vs. Belinder, 97 Mo. App. 64.
United States vs. Joint Traffic Association, 171 U. S. 505.
United States vs. Missouri Freight Association, 166 U. S. 209.
State ex inf. vs. Armour Packing Co. 173 Mo. 356.
Finck vs. Granite Co. 187 Mo. 244.

We are, therefore, of the opinion that none of the sections under onsideration are vulnerable to any of the constitutional assaults nade upon them.

67 VI.

On June 11th, 1907, after the time for taking testimony had ex-ired, the Republic Oil Company presented for filing in the office f the Secretary of State, the following affidavit:

"Whereas heretofore, to wit, on the 8th day of July A. D. 1901, he Republic Oil Company, being a corporation organized and exist-ng under the laws of the State of New York, did file in the office of he Secretary of State, of the State of Missouri, authenticated evi-dence of its incorporation, and in all respects complied with the equirements of the law of said state governing foreign private cor-orations, and designated an agent or representative in said state on whom service of process against said corporation could be made, and

Whereas, the said Republic Oil Company has disposed of all of ts property and business interests in said state and ceased doing usiness therein,

Now, therefore, the said Republic Oil Company does hereby abol-sh any and all offices or places of business it may have in said state and does hereby evoke and cancel the authority of its present gent, H. C. Cornforth, of Kansas City, in said State, and does ereby withdraw itself from the State of Missouri.

In witness whereof the said Republic Oil Company does hereby, y its proper officers, cause its name to be signed and its corporate eal to be attached at the City of New York, State of New York, his 3rd day of June, A. D. 1906.

[CORPORATE SEAL.] REPUBLIC OIL COMPANY,
By C. L. NICHOLS, *President.*

Attest:
CHARLES T. WHITE,
Ass't Secretary.

STATE OF NEW YORK,
County of New York, ss:

On the 3rd day of June, A. D. 1907, before me personally came C. L. Nichols to me known, who being by me duly sworn did 868 depose and say that he is the president of the Republic Oil Company, the corporation described in and which executed

the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was said corporate seal; that he signed his name to the same for said corporation, and that all of the statements contained in said instrument are true.

[L. S.] A. T. DOREMUS,
Notary Public, Richmond County.

Certificate filed in New York County.

The Secretary of State refused to file said affidavit of withdrawal for the following reasons stated by him:

"I, John E. Swanger, Secretary of State, do hereby certify that the original affidavit of withdrawal of the Republic Oil Company, of which the attached is a copy, was presented to me and left at my office by Frank Hagerman, the attorney of said company, upon June 11th, 1907, with the request that the same be filed in my office, and the only reason that the same was not then actually filed was that I desired the advice of the Attorney General as to whether in view of the pending litigation it should be permitted to be filed.

Witness my hand and seal this 22nd day of July, 1907.

JOHN E. SWANGER,
Secretary of State."

Said company contends that under and by authority of section 1018 Rev. Stat. of 1899, upon offering to file the affidavit, it had the legal right to retire from doing business in the state. Said section is as follows:

"The president or secretary of every domestic incorporated company in this state, when it shall dissolve, and the principal officer of every foreign corporation when it shall retire from business in this state, is hereby required to file with the secretary of State an affidavit to that effect, and any failure to comply with the
869 provisions of this section shall subject such company or the officers thereof to a penalty of from fifty to five hundred dollars, to be collected as is provided for the collection of penalties and remuneration of prosecuting officers in section 1017 of this article."

Counsel, therefore contend that when they presented the affidavit to the Secretary of State for filing, that act was equivalent to filing it within the meaning of the statute, and that when so filed it retired from the state and ceased to do business herein, and has in all respects voluntarily performed all the matters and things which the informant prays this court to compel it to do by its judgment and decree, which, it is insisted, disposes of the subject matter of the suit in so far as it is concerned, and for that reason this proceeding as to it is at an end, and the cause should be dismissed as to it.

The informant vigorously resists this contention upon two grounds: first, because, he says, there is no proper evidence in the record which shows that company has voluntarily retired from the state and, second, because it is answerable to the court for offenses which are so closely interwoven with and forming a part of the compact or conspiracy charged in the information that it is not

entitled to have the cause dismissed against it, but that the cause should proceed regularly to a final determination, and, at that time, enter a decree which will properly and justly dispose of the withdrawal question.

As to the first proposition, we have no hesitancy in saying that as an abstract legal proposition under ordinary circumstances any defendant in a suit may abate the same, by voluntarily doing all the things which the pleadings in the cause pray the court to compel him to do; and this may be done on motion at any stage of the litigation, before or after trial, or before or after an appeal is granted.

This question came before the Supreme Court of Massachusetts in the case of In re Franklin Telegraph Co. 119 Mass. 449,
870 which was a proceeding to forfeit a charter because of an illegal lease of its telegraph line to another line. Prior to the trial the lease was canceled and the court dismissed the proceeding because "the only injury alleged as a sufficient reason for the dissolution has therefore ceased to exist by the abrogation of the lease."

In State vs. Centerville Bridge Co., 18 Ala. 678, 681, the State instituted proceedings to forfeit a franchise because of a non-compliance with the statute. Pending the litigation the Legislature passed an act authorizing an assignee of the company to comply with the statute, but providing, "that nothing therein contained shall be so construed as to affect any suit or suits now pending in favor of or against said company. The Court said:

"Both plaintiff and defendant have united in vesting the subject matter of the controversy in a third person; the suit must therefore end, for further prosecution would be vain and fruitless. It is said in a suit to annul a title to an office will not be tried by *quo warranto* when at the time of the trial the term of office is expired. The State of Ohio vs. Jacobs, 17 Ohio R. 143; Ang. & Ames on Corp. 626 * * * We think the proviso was intended to apply only to suits brought by the Company against individuals or by individuals against the company. It could not have been the design of the legislature to give to Mayberry a privilege for the mere purpose of taking it from him by a suit then pending and without regard to any act of his."

In Hurd vs. Peck (Kansas), 45 Pac. Rep. 92, it was said:

"If we had then decided or should now decide the case in favor of the plaintiff, it is evident he would obtain no substantial right thereby and the time of this court ought not to be occupied by the consideration of abstracts questions of law, however important and interesting they may be.

This rule of practice is not confined to this class of cases,
871 but extends to and includes all kinds of litigation; and the court may make the order at any time, upon its own motion, as will appear from the following authorities:

Groves vs. Richmond, 52 Ia. 570.
Ditch vs. Sennott, 116 Ill. 288.
Hoskins vs. Lord Berdslet, 4 Term. R. 402.
In re Elsam, 3 Barn. & Cres. 597.

Black vs. Barton, 27 La. An. 89.
York County vs. Fewell, 21 S. C. 106.
State vs. Brown, 1 Mo. App. 449.
State vs. Railroad, 74 N. C. 287.
Kidd vs. Morrison, 1 Phil. Eq. (N. C.) 31.
Dakota Company vs. Glidden, 113 U. S. 222.
Foucher vs. Grass, 60 Ia. 507.
San Mateo Company vs. Railroad, 116 U. S. 38.
Adkinson vs. Taber, 7 Col. 195, 197.
Wood Paper Co. vs. Heft, 8 Wall. 333.
Cleveland vs. Chamberlain, 1 Black 419.

We now approach the second proposition mentioned, and it is not so free of doubt, nor so easy of solution. In fact, the adjudications upon this question are very few and meager in so far as our attention has been called to them. But the case of State ex rel. Phillips, 97 Mo. 335, bears closer resemblance as to the facts and law to the question now under consideration than any we have been able to find.

In that case the relator brought a suit in the circuit court of Jackson County against William Taylor and the Armour Brothers Packing Company, asking for judgment declaring null and void two tax-bills issued by the city engineer of the City of Kansas against property owned by relator to Taylor in payment for the construction of a district sewer, and held by the banking company as
872 collateral security. Relator claimed in his suit that the tax-bills were invalid because the city had no authority under its charter to cause the sewer to be built, but that they were nevertheless an apparent lien against the property and a cloud upon his title.

The circuit court dismissed the petition upon a hearing of the case, and relator appealed to the Kansas City Court of Appeals. Errors were assigned and joined in by the parties, and the case was duly submitted to the court for its decision, and was taken under advisement. While the case was in that position, the respondents, Taylor and the banking company filed in court, against the objections of relator, their suggestions and motion, stating that they had caused the tax-bills, regarding which complaint was made in the suit, to be cancelled by the engineer in his office and had deposited them, marked paid, with the clerk of the court for the use of relator, and had paid all the costs which had arisen or might arise in the suit, and moving the court to abate and strike from the docket relator's appeal. Relator resisted the motion, and showed by affidavits that he had not paid the tax-bills, and that he rejected and refused to accept the proffered satisfaction: that he was prosecuting the suit in the interest of other property owners against whose property similar bills had been issued, and who were contributing to the expenses of the suit, as well as in his own behalf, for the purpose of obtaining an adjudication upon the legality of the proceedings under which the sewer was built; that the object of his suit was to have the bills cancelled as void *ab initio*, and that he was entitled to an adjudication upon that issue, and that the recent offer of satisfaction was not

equivalent to such adjudication, and that he had, during the pendency of the suit, conveyed the property, and covenanted generally that the same was subject to no incumbrance whatever, and he demanded that the court proceed and decide the case. The court, however, sustained the motion, and dismissed the appeal.

The relator then applied to this court for a writ of mandamus, by which it was sought to compel the Kansas City Court of Appeals to reinstate the cause and to proceed with the hearing thereof.

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After reviewing many of the authorities above cited in disposing of that case, this court, speaking through Sherwood, J., said: "None of them, however, are exactly parallel to the case under discussion. This is no colorable appeal, no moot case, no case which has been compromised or settled; but a case where an offer has been made to the plaintiff by parties defendant; an offer which does not go the whole length of the plaintiff's demand, but an offer which falls far short of that; an offer which virtually confesses that he is right in his contention, but which seeks to head him off to preclude him from attaining all he demands. After great consideration of the subject the conclusion has been reached that the offer made was insufficient, and did not, therefore, extinguish the plaintiff's ground of equitable relief. Nothing short of that will answer. *The plaintiff had the right to have the full measure of the relief he claimed, or else, by a solemn adjudication of the court, to know the why and the wherefore of the refusal which denied him redress in full of his demand.* He had the right to make the demand he did, and it was out of the power of the defendants to prevent adjudication of the matters demanded, except by a confession as broad as that demanded. In that event and that event only, would the issues in the cause be dead. It would be making a precedent of most dangerous consequence to rule otherwise; in short, it would be sanctioning a *colorable dismissal.*"

The same argument is equally applicable to the contention of the Republic Oil Company. This is not a colorable proceeding against it, no moot case, no case which has been compromised or settled; but a case where an offer has been made to the informant by respondent, an offer which has been rejected; an offer which does not go the whole length of the informant's demand, but an offer which falls far short of that; an offer which virtually confesses that he is right in his contention, but which seeks to head him off to preclude him from attaining all he demands.

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The informant charges the Republic Oil Company with entering into an unlawful pool, trust or combination with its co-respondents in restraint of trade and to fix and maintain prices on commodities handled by them to the great damage and detriment of the public.

It is the formation of and entering into the pool, trust, or combination which constitute the usurpation and abuse of corporate power complained of, and which constitute the gist of this action, and the judgment of ouster is only the incident thereto; and the informant has the right to have the full measure of relief claimed, and the vol-

untary withdrawal of the respondent from the state does not determine the question of the existence of the pool, trust or combination it is charged with, nor satisfy the full demand of the informant. If it does, then, all the other two respondents would have to do to get rid of this litigation would be to file similar affidavits with the Secretary of State, and move for a dismissal of the cause, and thereby prevent an adjudication of the questions involved, and, at the same time, escape the penalties of past sin, if guilty, and then, on the morrow, re-enter the state and continue the business as of yore in defiance of all law and good morals. No, the issues of this proceeding are not settled, and it is out of the power of the Republic Oil Company and beyond the power of all the respondents to prevent an adjudication of the matters demanded, except by a *confession as broad as are the charges* contained in the information. In that event, and in that event only, would the issues in the cause be dead. The State of Missouri and the entire people thereof are entitled to have the questions involved herein fully and finally settled. It would be making a precedent of most dangerous consequence to rule otherwise, and it would sanction not only a *"colorable dismissal"* but would afford an impenetrable retreat and perfect immunity for such corporations as might see fit to violate the laws of the state.

The prayer of the informant for a judgment of ouster
875 against the Republic Oil Company is but one of the things asked for, but, since it has voluntarily offered to comply with that part of the complaint, that fact should be duly considered in entering the decree should the judgment of ouster go against the respondents.

For the reasons above stated, we are of opinion that the Republic Oil Company is not entitled to have the cause abated or dismissed as to it.

VII.

This brings us to the consideration of the main question involved in this proceeding, and that is, was there an unlawful combination or agreement existing between respondents in restraint of trade and in fixing and maintaining prices, as charged in the information? The State contends that such combination exists, while the respondents deny its existence. The Master found that issue for the state, and respondents except to that finding for various reasons.

The following facts are virtually undisputed: The Standard Oil Company of New Jersey, which will hereafter be called the New Jersey Company, is a corporation organized under the laws of New Jersey, with a capitalization of $110,000,000.

The Waters-Pierce Oil Company is a corporation organized under the laws of this state, with a capitalization of $400,000.

The Standard Oil Company of Indiana is a corporation organized under the laws of Indiana, capitalized at $1,500,000.

The Republic Oil Company is a corporation organized under the laws of New York, with a capital of $350,000.

The New Jersey Company owns practically all of the stock of the Indiana Company; sixty per cent of the stock of the Waters-Pierce

Company, and all of the stock of the Republic Company. The New Jersey Company also owns practically all of the stock of
876 several other oil companies, organized under the laws of various states. Mr. H. Clay Pierce owns the remaining forty per cent of the stock of the Waters-Pierce Company.

Practically all of the officers and directors of the Indiana Company and of the Republic Oil Company are either officers, directors or employes of the New Jersey Company; and a majority of those of the Waters-Pierce Company bear the same relation of the New Jersey Company.

The main office of the New Jersey Company is located at 26 Broadway, New York City; that of the Indiana Company is located at the same place; that of the Republic Company is located in Cleveland, Ohio; and that of the Waters-Pierce Company is in St. Louis.

The three latter companies kept books, papers and records at their main offices, showing full and complete transactions of each day's business, and each of them made full and complete reports of all of their business transactions to the New Jersey Company, even to the smallest detail. The business, books and accounts of each of these three companies are regularly inspected and audited by an auditor of the New Jersey Company twice a year.

These reports embraced, among other things, the sales and delivery of refined oils, deliveries of lubricating oils, comparative sales, deliveries of special oils, deliveries of outside oils, deliveries of wax candles, tank wagon and milk can deliveries, sales and delivery of naphtha, marine sales, total sales and net results, semi-annual statements showing costs of barreling and making all kinds of oils and products of petroleum.

A daily cash statement was sent. These cash statements were turned over to the comptroller of the Standard Oil Company of New Jersey.

All of said companies deal in petroleum and the various by-products thereof. The New Jersey and Indiana Companies are pro-
877 ducers and refiners of oil and are manufacturers of the various by-products thereof. The Republic Company for a year or so after its organization was also a producer and refiner of petroleum and a manufacturer of various by-products thereof, but was not refining or manufacturing at the time this suit was instituted. The Waters-Pierce Company has never produced or refined oil in this country, but is doing so in the Republic of Mexico.

The Indiana Company owns and operates a large refinery in Indiana and one at Kansas City, Missouri, and a third in the State of Kansas.

The Indiana, Waters-Pierce and Republic Companies are all vendors of refined oils and the by-products of petroleum. The two latter procure all of their supplies from the former.

There are several other oil companies doing business in this state, called "independent companies."

In 1878, by agreement between the Standard Oil Company and Waters-Pierce Company, there was the following division of territory made between them; beginning at a point on the Mississippi River

on the southern boundary of Lincoln county; thence in a western direction along the southern boundaries of Lincoln, Pike, Ralls, Monroe and Randolph counties; thence in a southwest direction along the eastern boundaries of Howard, Cooper, Pettis, Benton, St. Clair and Barton counties; and thence west along the southern boundary of Barton county to the Kansas line.

Under that agreement the Indiana Company took the territory lying north of that dividing line, and Waters-Pierce took that lying south of it. The latter company was also given Arkansas, Indian Territory, Oklahoma, Texas, Louisiana and the Republic of Mexico. This division of territory has been respected from the time it was made to the present, and neither the Waters-Pierce Company, upon the one hand, nor the New Jersey Company, upon the other hand, nor any of its subsidiary corporations, which include the Indiana Company, Standard Oil Company of Ohio, Consolidated Tank Line Company, Standard Oil Company of Kentucky, and the Standard Oil Company of Iowa, have ever invaded each other's territory in quest of trade, except as will now be stated.

The Republic Company was the successor of the Schofield, Shurmer & Teagle Oil Company of Cleveland, Ohio, which was one of the independent companies, and the most active competitor the Indiana and Waters-Pierce Company had in this state. It had its own refineries, and refined and sold high grades of oil in all parts of the state and throughout the middle west generally.

After the New Jersey Company acquired the Schofield,
878 Shurmer & Teagle interests, it caused the Republic Company to be organized, which took over the assets and property of the former, and continued to refine oil for a short time, and sold it in the same territory its predecessor had done. Not long after the organization of the Republic Company it ceased to refine oil, and its refineries were dismantled, and, after that, it procured all of its oil and supplies from the Indiana Company and continued to sell oil in Missouri, as before, with this limitation—it would compete vigorously for the trade of all of the independent companies but never competed for the trade of the Indiana Company, nor for that of the Waters-Pierce Company, except upon three or four occasions, whereupon vigorous protests were entered by the Waters-Pierce Company to the New Jersey Company, which resulted in smothering out all competition between the Waters-Pierce and Republic companies. And it may not be out of place to here state, that the latter company from its organization up to the time of the institution of this suit masqueraded under and sold oils as one of the independent companies, and thereby caused the public to believe that it was an independent company.

The Indiana Company sells in the territory lying north of the dividing line, and not south of it, while the Waters-Pierce Company sells south of that line, and not north of it. All orders for oil received by the Indiana Company to be delivered in the Waters-Pierce Company's territory are turned over to the latter and by it filled; and all orders received by Waters-Pierce for oil to be delivered in the territory of the Indiana Company are turned over to the latter,

and by it filled. Whenever through mistake or design the agents of either of those companies sell oils within the territory of the other, the transaction is turned over to that company and it reaps the benefits thereof.

Neither the Indiana Company nor the Waters-Pierce Company will sell to the independent companies except at retail prices; and both of them have waged a most relentless war against the independents by a system of espionage and rebates given upon sales of goods.

879 The oil for the Indiana Company, and all other subsidiary companies of the New Jersey Company is transported through pipe line and tank cars belonging to the latter company; while the oil for the Waters-Pierce Company is transported in tank cars, about one-half of which are owned by it and the other half is owned by the New Jersey Company, which aggregate, if we correctly understand the record, about one hundred and thirty cars. But neither of the said companies will permit any of the independent companies to transport oil through the pipe lines or in their tank cars.

The Indiana Company, Waters-Pierce Company and the Republic Company all sell the same oils and grades of oil under different names or brands; each company having its own names or brands for the oils sold by it.

Prices for the products of petroleum, especially refined oils, illuminating and gasoline, are fixed by the Waters-Pierce Company.

It sends out to the trade card quotations, giving tank wagon and barrel prices. As a rule those prices are followed by all other oil companies, including the independent companies, doing business in this state. As long as the independent companies do not reduce prices or increase the aggregate amount of their sales above ten or fifteen per cent of the entire amount of the sales made in the state, there is no war made upon them regarding prices; but whenever * * * any independent company reduces prices below those fixed by Waters-Pierce or whenever their aggregate sales exceed fifteen per cent of all sales made in the state, a vigorous warfare is waged against them, chiefly through the Republic Company, by means of an elaborate system of espionage in their business and cutting prices or giving rebates until the independents are glad to throw up their hands and say "enough" and be contented to sell oil at the prices and in the quantities prescribed by the Waters-Pierce Company and acquiesced in by the Indiana and Republic Companies. And as a result of this method, the Waters-Pierce Company fixes the prices for which all such oils are sold in the state, by all dealers, including the independent companies, and at the same time and by the same means it controls and monopolizes for itself and the Indiana

880 and Republic Oil Companies from eighty-five to ninety-five per cent of the entire oil business of the state.

The large capital, the means of transportation and the capacious and convenient storage capacity, taken in connection with the almost perfect and far-reaching delivery systems owned, possessed and con-

trolled by the Indiana, Republic and Waters-Pierce Companies enable them to carry out the business methods above mentioned.

All of the dividends of the Indiana, Republic and Waters-Pierce Companies were paid either directly or indirectly into the treasury of the New Jersey Company, except, however, those which were paid on the forty per cent of the stock of the Waters-Pierce Company owned by Mr. Pierce—those dividends were paid to Mr. Pierce, which were about seven hundred per cent per annum on the capitalization of $400,000. This $400,000, however, was not the entire assets of the Waters-Pierce Company. Its total assets amounted to about $12,000,000, which sum if added to the estimated value of the "name and good will" of the concern, the total assets would be swol-en to the sum of $45,000,000.

The record seems to be silent as to the value of the assets of the New Jersey, Indiana and Republic Company-; nor does it disclose the amount of the annual dividends which have been paid by those companies.

It was a common and frequent occurrence that officers, directors and employés of the New Jersey Company and all its allied corporations, including the Waters-Pierce Company, were transferred from one of said companies to another, either by election or contract of employment.

Auditors working under Mr. Wade Hampton, general auditor of the New Jersey Company, regularly audited the books and accounts of all these companies and reported results to him at 26 Broadway, New York City.

The salaries of these auditors were fixed by Mr. Hampton, and charged to the Waters-Pierce Co. by him, when auditing for that company, which were paid by it, including all of their expenses. Mr. Pierce, however, testified that he had no knowledge of that fact, and that if he — known of it, he would not have permitted it. This only empha-izes the fact that the New Jersey Company exercised control over the Waters-Pierce Company without even consulting him.

Mr. H. M. Tilford, and succeeding him, Mr. R. H. McNall,
881 was the commercial agent of the Waters-Pierce Company, in New York, and his office was in the same rooms with the New Jersey Company, and it was through him that the business of the former company was transacted with the latter.

Mr. C. L. Nichols, president of the Republic Company, was also assistant to Mr. L. J. Drake, sales agent of the Indiana Company, both of whose offices were located at 26 Broadway, with the New Jersey Company. Mr. Nichols instructed all officers, agents and employés of the Republic Company to inform the trade that said company was an independent company and had no connection whatever with the New Jersey Company. This was done in order that it might sell oils to all persons who would not deal with the New Jersey, Waters-Pierce or other Standard Oil Companies. The bringing of this suit exposed the relations existing between the New Jersey and Republic Company-, which destroyed its usefulness and necessitated its going out of business.

The same relations and conditions existing in this state between the Waters-Pierce Company and the New Jersey Company and its subsidiary corporations also existed between them in Texas, Oklahoma and Arkansas, with the exception that Waters-Pierce had those states as its exclusive territory.

The officers of all the respondents knew the stock of their respective companies was either owned or controlled by the New Jersey Company, as before stated.

We have thus stated the most salient facts of the case, as shown by the evidence and the Master's report to be true. Upon those facts, with certain incidences thereto, taken in connection with certain inferences deducted therefrom, as shown by this report, constitute the reasons assigned by him for finding that the respondents are guilty of the combination and conspiracy charged against them in restraint of trade and in fixing and maintaining prices of commodities handled by them.

The respondents make a most vigorous assault upon that finding of the Master, and insist that those facts, taken in connection
882 with all the reasonable deductions that may be drawn from them, do not establish their guilt.

The position of the Master is, that he had the legal right to, and did consider all the facts and circumstances shown by the evidence, and the relation they bore to each other, in connection with the reasonable inferences to be drawn therefrom, and, that, when so viewed and weighed, they pointed with an unerring finger to the guilt of the respondents. While, upon the other hand, counsel for respondents separate each factor of the alleged combination and trust, and each method of doing business in pursuance thereof from each other. Then they proceed at great length to a consideration of the legality of each part and phase of the alleged combination and each of the different acts, agreements and things done in furtherance thereof, and, as found by the Master, for the purpose of showing the legality of all the transactions and methods employed by them in the conduct of their business.

In pursuance of that line of defense, the respondents, while conceding the New Jersey Company owns practically all of the stock of the Indiana and Republic Companies, and a majority of that of the Waters-Pierce Company, yet they advance the legal proposition that such ownership does not constitute an unlawful combination between them in restraint of trade, as charged in the information.

The position of counsel for informant upon that question is not entirely clear, yet they cite authorities which sustain the proposition, that where the stocks of several corporations engaged in the same line of business are placed in the hands of a trustee or in the possession of a holding company, with power and authority in the trustee or holding company to conduct and carry on the business of the several corporations, that such placement of stocks and business management constitutes, as a matter of law, a trust and combine in restraint of trade within the meaning of the statutes.

Finck vs. Granite Co. 187 Mo. 244.

State ex rel. vs. Standard Oil Company, 49 Ohio St., 137.

Northern Securities Co. vs. United States, 193 U. S. 197.

883 But in each of those cases the information was predicate upon those facts, and when the evidence disclosed that thos allegations were true, then those courts held as a matter of law tha they constituted a trust or combination within the meaning of th anti-trust statutes. While in the case at bar the cause of actio stated is that they, *the three companies,* have unlawfully and fraudu lently entered into a conspiracy, combine or agreement in restrain of trade in violation of their corporate rights; and it is not allege that a trustee was appointed or a holding corporation was organize for the purpose of taking over the stock of the respondent corpora tions, or that the stock and business management were turned ove to such trustee or corporation for the purposes mentioned.

Under that state of the pleadings, we are not inclined to lend ou assent to the proposition, that the ownership of the stock alone, b the New Jersey Company, is conclusive evidence of an unlawfu combination between the three respondents, as charged in the infor mation.

But, notwithstanding the last mentioned proposition, counsel fo informant insists that such ownership is admissible in evidence as fact or circumstance tending to show the existence of the unlawfu combination charged.

That was one of the questions presented to this court for deter mination when the case was here on a former occasion; and i passing upon that question Lamm, J., speaking for the court, said "It may be admitted that under some circumstances corporation with no community of interest as holders of stock in each other, o even where the stock was not in the hands of a holding company a trustee, might be guilty of a violation of our anti-trust law. It migh further be admitted that a trust or combination might be prove by the overt acts of the agents of respondent corporations sufficiently distinctive and significant and of such long continuance as would tread back and tend to establish the obnoxious pact or trust agree ment. (State ex inf. vs. Fireman's Fund Ins. Co., 152 Mo. l. c. 36, et seq.) Yet, experience has shown that stock holding show-

884 ing a community of interest, while in some cases in-ocuous might in given cases be the very root from which the trust agreement grows. On principle, why may not this root be got at? In an investigation intended to lead up to the establishment of a fraudulent conspiracy between individuals, taking for illustration a fraudulent disposition of property, it could not be denied that kin ship or close business intimacy would be relevant matter, for what it was worth, be that worth much or little, and we can perceive no good reason why this investigation may not commence at the very ground work of these corporations, showing, if fact it be, a close relationship in stock holdings and in the personnel of officers and agents, the use of the same instrumentalities and methods, simultaneous in time and originating in the same radiating center—a sort of pre natal, natal or else post-natal disposition to combine, as it were—to be followed, of course, by sufficient proof indicating that the com-

munity of stock interest, if any, had been used as a foundation upon which to build the illegal structure denounced by the statute."

State ex inf. vs. Standard Oil Co., 194 Mo. l. c. 155, 156.

That was one of the main questions then presented to this court for determination, but since it has been so earnestly urged again upon our attention, we have re-examined it, and, after due consideration, we are unable to see any good reason for changing our views regarding the conclusions there reached.

It is next insisted by respondents that the division of territory between the Indiana and Waters-Pierce Company is not a combination in restraint of trade, and, therefore, is not illegal.

Their contention is that this division of territory is not like the case where two independent mercantile companies divide a state for selling purposes, each agreeing not to sell in the other's territory.

They differentiate the two cases by saying that the Indiana
885 Company was a producer as well as a vendor of oils, and that it had a perfect legal right to divide the state into two or more divisions, and to enter into a contract with a dealer in each of said divisions, and thereby bind itself to sell oil exclusively to each of said dealers in each of said divisions, and thereby bind each of said dealers to purchase oil exclusively from it. In other words, the Indiana Company contends that if it had confined itself to refining oil, and if by contract it had bound itself to sell exclusively to one purchaser in the northern half of the state, and to another in the southern half, then there could have been no valid, legal objection urged against such contracts.

In the consideration of a similar question, arising under the Anti-trust Acts of Congress, Sanborn, J., in the case of Phillips vs. Iola Cement Co., 61 C. C. A. Rep. 19, used the following language:

"It is now settled by repeated decisions of the Supreme Court that the test of the validity of a contract, combination or conspiracy challenged under the anti-trust law is the direct effect of such a contract or combination upon competition in commerce among the state. If its necessary effect is to stifle competition, or to directly and substantially restrict it, it is void. But if it promotes, or only incidentally or indirectly restricts competition in commerce among the states, while its main purpose and chief effects are to foster the trade and enhance the business of those who make it, it does not constitute a restraint of inter-state commerce within the meaning of that law, and is not obnoxious to its provisions. This act of Congress must have a reasonable construction. It was not its purpose to prohibit or to render illegal the ordinary contracts or combinations of manufacturers, merchants and traders, or the usual devices to which they resort to promote the success of the business, to enhance their trade, and to make their occupations gainful, so long as those combinations and devices do not necessarily have a direct and substantial effect to restrict competition in commerce among the
886 states. (Hopkins vs. U. S. 171 U. S. 578, 592; 19 Sup. Ct. 40; 43 L. Ed. 290; Anderson v. U. S. 171 U. S. 604, 616; 19 Sup. Ct. 50; 43 L. Ed., 300; U. S. v. Joint Traffic Ass'n 171 U.

S. 505, 568; 19 Sup. Ct., 25, 43 L. Ed., 259; Addyston Pipe & Steel Co. v. U. S. 175 U. S. 211, 245; 20 Sup. Ct., 96; 44 L. Ed., 136; U. S. v. Trans-Missouri Freight Ass'n. 166 U. S. 290, 339, 340, 342; 17 Sup. Ct., 540; 41 L. Ed. 1007; U. S. v. Northern Securities Co. (C. C. 120 Fed., 721, 725.) The application of this rule to the facts of the case in hand leaves no doubt that there was nothing in the contract before us obnoxious to the provisions of the anti-trust law of 1890. The Iola Cement Company had no monopoly of the manufacture or sale of cement in the United States. It was surrounded by competing manufacturers, and the contract which it made with Parr & Co. of Galveston, had no direct or substantial effect upon competition in trade among the states. It left the manufacturers who were competing with the plaintiff for the trade of the country free to select their customers, to fix their prices, and to dictate their terms for the sales of the commodities they offered, so that in this regard no restraint whatever was imposed. If it had the effect to restrain Parr & Co. from using the product which they purchased to compete with other jobbers or manufacturers in the country beyond the limits of the state of Texas, this restriction was not the chief purpose or the main effect of the contract of sale, but a mere indirect and immaterial incident of it. The agreement of sale imposed no direct restriction upon competition in commerce among the states, did not constitute a restraint of that commerce, and was not obnoxious to the provisions of the act of July 2, 1890. For a more extended consideration of the principles upon which this decision is based, for a citation, review an- analysis of the authorities which sustain them and which compel the ultimate conclusion which we have reached in this case, reference is made to the opinion of this court in Whitwell v. Continental Tobacco Co., (which is field herewith), 125 Fed. 454. A repetition of the citation and review
887 of authorities, and of the more exhaustive discussion of principles there indulged in, would be useless here, and it is omitted."

In Oregon Steam Navigation Co. v. Windsor, 20 Wall., 64; 22 L. Ed. 315, 318, the right of a territorial division was distinctly recognized, Mr. Justice Bradley saying:

"In accordance with these principles, it is well settled that a stipulation by a vendee of any trade, business or establishment, that the vendor shall not exercise the same trade or business, or erect a similar establishment within a reasonable distance, so as not to interfere with the value of the trade, business or thing purchased, is reasonable and valid. In like manner a stipulation by the vendor of an article to be used in a business or trade, in which he is himself engaged, that it shall not be used within a reasonable region or distance, so as not to interfere with his said business or trade, is also valid and binding." Again, he said:

"Suppose the case of two persons associated in business as partners, and engaged in a manufacture by which they supply the country with a certain article, but the process of manufacture is a secret; and they agree to separate, and one of the terms of their separation

is, that one of the parties shall not sell the manufactured article in Massachusetts, where the other resides and carried on business; and that the latter shall not sell the article in New York, where his associate is to reside and carry on business. Can there be any doubt that such an agreement would be valid and binding?"

In Whitewell v. Continental Tobacco Co., 60 C. C. A. 290; 125 Fed. Rep. 454, 459, 460-63, the facts were:

"A manufacturer, a corporation, and its employe restricted the sales of its products to those who refrained from dealing in the commodities of its competitors by fixing the prices of its goods to those who did not thus refrain so high that their purchase
888 was unprofitable, while it reduced the prices to those who declined to deal in the wares of its competitors so that the purchase of the goods was profitable to them."

This was held not to be, within the meaning of the Sherman Act, an arrangement to lessen competition. Judge Sanborn said:

"The right of each competitor to fix the prices of the commodities which he offers for sale, and to dictate the terms upon which he will dispose of them, is indispensable to the very existence of competition. Strike down or stipulate away that right, and competition is not only restricted, but destroyed. * * * In the contract, combination, or conspiracy which is charged against the defendants in this case there is nothing of this character. The Tobacco Company is a manufacturer and trader, and McHie is its employe. Conceding, for the purpose of the argument only, but not deciding that there may be a contract, combination, or conspiracy in restraint of trade between an employer and his employé, no such contract, combination, or conspiracy between them can be a violation of this law unless it is in restraint of interstate commerce; and the only combination charged against the defendants is their combination to make sales of the commodities of the tobacco company profitable to purchasers to those persons only who refrain from dealing in the wares of their competitors. The two defendants in this case have never been and never intended to be competitors. There has never been any competition, actual or possible, between them, and hence no competition between them is or can be restrained by their combination to conduct the trade of the tobacco company. The contract, combination, or conspiracy charged against them did not restrict competition between them and the independent manufacturers or dealers, who, according to the complaint, were their competitors, because it left the latter free to fix the prices of their goods and the terms at which they would dispose of them to all intending purchasers. The Tobacco Company and its competitors were not dealing in articles of prime neces-
889 sity, like corn and coal, nor were they rendering public or *quasi* public service, like railroad and gas corporations. Each of them, therefore, had the right to fix the prices at which it would dispose of them, and the terms upon which it would contract to sell them. Each of them had the right to determine with what person it would make its contracts of sale. In re Greene (C. C.) 52 Fed., 104, 115; In re Grice (C. C.) 79 Fed. 627, 644; Walsh v.

Dwight (Sup.) 58 N. Y. Sup. 91, 93; Brown v. Rounsavell, 78 Ill. 589; Commonwealth v. Grinstead, (Ky.) 63 S. W. 427; Allgeyer v. Louisiana, 165 U. S. 578, 589; 17 Sup. Ct. 427; 41 L. Ed. 832. There is nothing in the act of July 2, 1890, Ch. 647; 26 Stat. 209 (U. S. Comp. St., 1901, p. 3200), which deprived any of these competitors of these rights. If there had been, the law itself would have destroyed competition more effectually than any contracts or combinations of persons or of corporations could possibly have stifled it. The exercise of these undoubted rights is essential to the very existence of free competition, and so long as their exercise by any person or corporation in no way deprives competitors of the same rights, or restricts them in the use of these rights, it is difficult to perceive how their exercise can constitute any restriction upon competition or any restraint upon interstate trade. The acts of the defendant which are alleged by the complaint in this action to constitute an unlawful restraint upon interstate commerce are nothing more than the lawful exercise of these unquestioned rights which are indispensable to the existence of competition or to the conduct of trade. The Tobacco company and its employé fixed the prices of its commodities so high that the plaintiff could not profitably buy them. This was no restriction upon free competition, because it left the rivals of the company free to sell their competing commodities at any price which they selected to charge for them. It would have been no violation of the law under consideration if the tobacco company and its employé had combined to refuse to sell any of its commodities at any price, and to retire from the business in which they were engaged entirely.
890 Much less could it be a violation of this act for them to fix their prices too high for profitable investment by the plaintiff. The tobacco company and its employé sold its products to customers who refrained from dealing in the goods of its competitors at prices which rendered their purchases profitable. But there was no restriction upon competition here, because this act left the rivals of the tobacco company free to sell their competing commodities to other purchasers than those who bought of the defendants, and free to compete for sales to the customers of the tobacco company by offering them goods at lower prices or on better terms than they secured from that company. The tobacco company and its employé were not required, like competitors engaged in public or quasi public service, to sell to all applicants who sought to buy, or to sell to all intending purchasers at the same prices. They had the right to select their customers, to sell and refuse to sell to whomsoever they chose, and to fix different prices for sales of the same commodities to different persons. In the exercise of this right they selected those persons who would refrain from handling the goods of their competitors as their customers, by selling their products to them at lower prices than they offered them to others. There was nothing in this selection, or in the means employed to effect it, that was either illegal or immoral. It had no necessary effect to directly and substantially restrict free competition in any of the products of tobacco, and it did not unlawfully restrain interstate

commerce, because it in no way restricted the exercise of the rights of the competitors of the tobacco company to fix the prices of their goods and the terms of their sales of similar products according to the dictates of their respective wills. It is contended, however, that this selection by the defendants of customers who refrained from selling the goods of their competitors violated Section 2 of the Anti-Trust Act, because it was an 'attempt to monopolize * * * part of the trade or commerce among the several states.'

It is admitted that the practice of the defendants was not
891 only an attempt, but a successful attempt, to monopolize a part of this commerce. But is every attempt to monopolize any part of interstate commerce made unlawful and punishable by Section 2 of the Act of July 2, 1890, Ch. 647, 26 Stat., 209 (U. S. Comp. St., 1901, p. 3200)? If so, no interstate commerce has ever been lawfully conducted since that act became a law, because every sale and every transportation of an article which is the subject of interstate commerce is a successful attempt to monopolize that part of this commerce which concerns that sale or transportation. An attempt by each competitor to monopolize a part of interstate commerce is the very root of all competition therein. Eradicate it, and competition necessarily ceases—dies. Every person engaged in interstate commerce necessarily attempts to draw to himself, and to exclude others from, a part of that trade; and, if he may not do this, he may not compete with his rivals, all other persons and corporations must cease to secure for themselves any part of the commerce among the states, and some single corporation or person must be permitted to receive and control it all in one huge monopoly. The purpose of the Act of July 2, 1890, was, however, to prevent the stifling of competition, not to destroy it or to foster monopoly, and any construction of any of its provisions which would give it such an effect is unreasonable and inconsistent with the object and spirit of the law. It is an interpretation which fosters the mischief it was passed to remedy, and destroys the remedy provided to abate the evil, while a sound construction would tend to abate the mischief and to promote the remedy. It cannot, therefore, be the true meaning of the second section of this law that every attempt to monopolize any part of interstate commerce is illegal. The act must, as the Supreme Court has twice declared (Hopkins v. U. S. 171 U. S. 578, 600; 19 Sup. Ct., 40; 43 L. Ed. 290; U. S. v. Joint Traffic Ass'n, 171 U. S. 505, 568; 19 Sup. Ct., 23; 43 L. Ed. 259), have a reasonable construction. The purpose of the second section is the same as that of the first—to prevent the restriction of compe-
892 tition—and the two sections ought to receive similar interpretation. The Supreme Court has declared that the true construction of the first section is that no contract, combination, or conspiracy is denounced by it unless its necessary effect is to directly and substantially restrict competition in commerce among the states. By a parity of reasoning, the correct interpretation of the second section must be that no attempt to monopolize a part of the commerce among the states is made illegal or punishable by the provisions of that section unless the necessary effect of that attempt

is to directly and substantially restrict commerce among the states. The acts of the defendants had no such effect. They evidenced nothing but the legitimate efforts of traders to secure for themselves as large a part of interstate trade as possible, while they left their competitors free to do the same. It was not—it could not have been—the purpose or the effect of the second section of this law to prohibit or punish the customary and universal attempts of all manufacturers, merchants, and traders engaged in interstate commerce to monopolize a fair share of it in the necessary conduct and desired enlargement of their trade, while their attempts leave their competitors free to make successful endeavors of the same kind. The acts of the defendants were of this nature, and they did not violate the second section of the law. An attempt to monopolize a part of interstate commerce, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the states, violates the second section of this act. But an attempt to monopolize a part of interstate commerce which promotes or but indirectly or incidentally restricts, competition therein, while its main purpose and chief effect are to increase the trade and foster the business of those who make it, was not intended to be made, and was not made, illegal by the second section of the act under consideration, because such attempts are indispensable to the existence of any competition in commerce among the states."

893 In Dueber v. Watch Co., 14 C. C. A. 14; 66 Fed. Rep. 637, 643, 645, 652, Judge Lacombe said:

"The phrase used in the Act of 1890, viz: 'restraint of trade,' is no new one. It had heretofore been used by courts applying the doctrines of the common law in determining the validity of contracts. It is to be presumed that the lawmakers, when they chose this phrase, intended that it should have, when used in the statute, no other or different meaning from that which had always been given to it in judicial decisions and in the common understanding. The title indicates that the phrase is so used, for the act is described as one 'to protect trade and commerce against unlawful restraints and monopolies;' and, though the title to an act cannot control its words, it may furnish some aid in showing what was in the mind of the legislator, (U. S. v. Palmer, 3 Wheat, 610). The 'restraint of trade' which is obnoxious to the provisions of the first section must be of such kind as was, before the passage of the act, recognized as unlawful. (In re Greene, 52 Fed., 104., U. S. v. Trans-Missouri Freight Ass'n, 58 Fed., 58; 7 C. C. A. 15). It may be assumed that the total amount of any given commodity which will be purchased by a community is limited, and when several sellers of such commodity enter into a combination in the form of a partnership, and by ingenious advertising, or by the devices of business competition, or by the offer of favorable terms to buyers, enlarge their own trade in such commodity, they restrain to some extent the trade of one or more of their competitors therein. But no one, not even the plaintiff in error, contends that the statute forbids any such acts, although, if the words be taken with absolute

literalness, the phrase 'restraint of trade' is broad enough to cover them. * * * An individual manufacturer or trader may surely buy from or sell to whom he pleases, and may equally refuse to buy from or sell to anyone with whom he thinks it will promote business interests to refuse trade. That is entirely a matter of his
894 private concern, with which governmental paternalism has not as yet sought to interfere, except when the property he owns is 'devoted to a use in which the public has an interest'; and such public interest in the use has as yet been found to exist only in staple commodities of prime necessity. 'Munn v. Illinois, 94 U. S., 113; Budd v. New York, 143 U. S. 517; 12 Sup. Ct. 468). It is a business device, probably as old as business itself, to seek to increase the number of one's customers, and the extent of their purchases, by treating more favorably those who become exclusive customers. Certainly there is nothing unlawful or unfair in the statement to the trade by the maker of any kind of merchandise, "My goods are for sale, only to those who will buy from me exclusively, not to others."

Judge Wallace also said:

"I do not question the right of the defendants to combine for their own protection against unfair competition, and in that behalf, their commodity not being one of prime necessity, to agree not to sell to those who do not buy exclusively of them, or who buy of the complainant or some other obnoxious competitor."

In Vandeweghe v. Brewing Co. (Tex. Civ. App.) 61 S. W. Rep., 526, 527, it was said:

"The only fact relied upon to show a trust is an agreement by the plaintiff not to sell beer to anyone else within a certain designated territory, contributory to the defendant's place of business. We think the case is distinguishable from the cases heretofore held to violate the anti-trust law, and within the doctrine announced in Gates v. Hooper 90 Tex. 563; 39 S. W. 1079."

In Parke & Sons Co. v. Nat. Druggist Ass'n, 54 App. Dic. 223; 66 N. Y. Supp., 615, it was said:

"It cannot be denied that each manufacturer has the right to refuse to sell to any one if he sees fit. If he chooses to make his goods and sell them, he has the right to fix any price he chooses upon them. Not only so, but he has the right to select his
895 own customers. *Me* may agree to dispose of all his goods to one person, or he may be willing to supply the whole trade except one person; and whatever he chooses to do is a matter with which the law has no concern, because the goods are his, to be kept or soil, as he pleases. So he may not only fix his own price, but he may impose such terms as he sees fit, or can exact from his customers. These matters are absolutely within his own control. If each manufacturer is at liberty thus to control the sale of his goods, undoubtedly all may, if they see fit, agree together to enforce conditions which each one seeks to impose upon the dealing with the article which he makes. The action of each manufacturer in fixing prices and imposing conditions of sale is undoubtedly legal."

In Fowle v. Parke, 131 U. S. 88; 33 L. Ed., 67, 74, it was decided:

"A contract, by which defendants, for a valuable consideration, agreed not to sell a certain medicinal preparation, within the territory which it was covenanted complainants should occupy exclusively, nor sell to others for sale there, nor promote such sales, is valid."

Mr. Chief Justice Fuller said:

"The vendors were entitled to sell to the best advantage, and in so doing to exercise the right to preclude themselves from entering into competition with those who purchased, and to prevent competition between purchasers, and the purchasers were entitled to such protection as was reasonably necessary for their benefit."

In 1 Eddy on Combinations, at Section 244, it is said:

"Agreements which have for their object the realization of a fair price for the product manufactured and sold are not against public policy, even though in some respects they operate in restraint of trade."

This rule was applied to the Anti-Trust Act of New York (Cohen v. Envelope Co., 56 N. Y. Supp. 588, 589), in this language:

"Agreements which have for their purpose the realization of a fair price for the product manufactured and sold do not con-
896 travene any rule of public policy, even though in some respects they operate in restraint of trade."

So in Ontario Salt Co. v. Merchants Salt Co., 18 Grant's Ch., 540, it was said:

"I think a distinction would be found in the consideration that here the article, the price of which was to be regulated, was not to be purchased in the market, but was actually to be produced by the parties themselves, and this product they could not be compelled to part with except on their own terms."

It will be observed by reading the foregoing cases, cited by respondents in support of their contention, that they refer to a manufacturer, and in each of said cases the manufacturer sold its merchandise to a dealer, and that manufacturer entered into a contract with that dealer, by which it bound itself to sell its goods and merchandise to him, and no one else within a designated territory, and by which the dealer also bound himself to purchase exclusively from that manufacturer during the life time of the contract. It is thus seen that the manufacturer and dealer only bound themselves to do that which they had a perfect legal right to do. The manufacturer had a perfect right to sell his wares to only one dealer in each town, if he saw proper to do so, or he could decline to sell to every one, in any or all of such towns, if he so chose; while upon the other hand, the dealer also had a perfect legal right to purchase exclusively of the manufacturer, or the right to refuse to purchase from all manufacturers. It must be conceded that both of those propositions are true; and that being so, then we are unable to see any valid or legal objection that can be logically presented against such a contract as above supposed. It in no manner prevent other manufacturers from selling the same class of goods to other dealers in the same towns in competition with those sold under the supposed contract."

There is nothing wrong legally or morally in such a con-
897 tract and arrangements. No manufacturer, in the absence of express legislation to the contrary, should be required to place his own fabrics in competition with each other. The law is satisfied in that regard if the different manufacturers of goods are left in reasonable and fair competition with each other. It will also be observed by reading those cases, that there was no contract or agreement between different manufacturers by which they bound themselves not to sell their respective fabrics in the same towns or cities, and thereby prevent competition in the sale of their goods and wares.

But the contract involved in the case at bar, dividing the state into the north and south territory, and assigning the north half to the Indiana Company and the south half to the Waters-Pierce Company, with an agreement that they were not to sell in each other's territory, presents quite a different proposition from that just considered.

In the case at bar, the Indiana Company was not only a manufacturer of the products of petroleum, but it was also a large dealer, as large if not larger than was the Waters-Pierce Company. Now, instead of eliminating the fact that the former was a dealer, as respondents contend we should and consider it only as a refiner of oils, we should consider it just as it is. It is both a refiner of and dealer in oils, both at retail and at wholesale; while the Waters-Pierce Company is a dealer and not a refiner. But when we consider the fact that both of those companies are dealers in oils, and that they have divided the state into two parts, with an agreement by which they bind themselves not to sell to the trade in each other's territory, coupled with the further fact that the Indiana Company bound itself to sell as a refiner to the Waters-Pierce Company exclusively, in that territory, with the corresponding agreement on the part of the Waters-Pierce Company to purchase exclusively from the former, presents quite a different question from that supposed by counsel for respondents, and from those considered by the
898 courts in the cases before considered. And especially is this true when we consider the further fact that neither of said companies would sell to any other dealer except at retail prices.

In discussing a similar question which arose under the Sherman Act regarding restraint of interstate commerce, the Supreme Court of the United States in the case of Montague & Co. v. Lowry, 193 U. S. 38, 47, used this language:

"It was not a combination or monopoly among manufacturers simply but one between them and dealers in the manufactured article, which was an article of commerce between the states. United States v. E. C. Knight Company, 156 U. S., 1, did not therefore cover it."

This is a complete answer against the contention of counsel for respondents.

To the same effect are the cases of

Northern Securities Co. v. U. S. 193 U. S. 197, 329.
Swift v. United States, 196 U. S. 375, 396.
Loew v. Lowler, 208 U. S. 274.

And in the consideration of this proposition we should not lose sight of the important position occupied by the Schofield, Schumer & Teagle Oil Company in the oil market, and its sharp competition with respondents prior to the time it was acquired and taken over by the New Jersey Company, and the subordinate position it has occupied, and the almost total lack of competition that has existed between them since that time.

These facts possess greater probative force tending to show a combination in restraint of trade when thus viewed than when considered separate and distinct from each other.

The only cases cited by counsel for respondents which, in our judgment, support their contention are the following:

In the case of Wickens v. Evans, 3 Younge & Jervis, 327, the court said:

899 "This question, as it appears to me, is confined within a narrow compass; and, as we have all formed the same opinion, I shall state my views of it very shortly. The principles upon which the decisions upon subjects of this nature are founded have been accurately stated; and, indeed, have so frequently and so long been acted upon that they are now indisputable. A general, universal restraint of trade, inasmuch as it affects the public property and the interest of the community, is bad; * * * But it is submitted that there may be, upon a good consideration, a partial restraint of trade; and that an agreement for that purpose is sustainable and has been sustained. The legality of a partial restraint of trade has been established in a variety of cases; and the general transactions of mankind furnish daily instances of its existence. Without resorting to the aid of black cotton lines in order to divide all England into districts, there is no man engaged in trade

900 who does not, in effect, impose some restraint upon himself, in point of practice, by confining himself within a particular district and circumscribing his trade within certain bounds. It has been supposed that the public are interested in precluding the parties from entering into the agreements now in question; but I think it very doubtful whether the benefit of the public would be best consulted by these three persons continuing to travel over the whole country, or by each confining himself to the district marked out in the map. Let us see what is the case now presented. It appears, according to the recital in the agreement, that these three persons, in carrying on their business of box-makers, had traveled into various parts of the country to vend their boxes and trunks, and had sustained great loss and inconvenience by reason of exercising this trade in the same places. This is the mischief and evil recited in the agreement—and what is the remedy they propose? Not a monopoly, except as between themselves, because every other man may come into their districts and vend his goods. All they propose is, that they shall not carry on rivalry, nor continue any longer to trade throughout the country. This, then, is only a partial restraint of trade. But it is said that, admitting that *so* be so, there is no consideration extrinsic of the agreement itself; and that agreement is illustrated by the cases of a master giving up his business

to his apprentice or to his journeyman. It strikes me, however, that in the present case there is as good a consideration as in either of those alluded to. Each party here, before the agreement entered into, has a trade in all the districts and he agrees to retire and to relinquish that trade in two of those districts, in order to secure the other in undisturbed possession. An objection is then made to that part of the agreement by which it is stipulated that, in case other persons shall begin to trade as box-makers in any of the districts, the parties shall meet to devise means to promote their own views. What those means may be it is unnecessary to surmise, but we can not presume that they will be illegal; and, there-
901 fore, the stipulation does not affect the validity of the agreement".

In Hearn v. Griffin, 2 Chitty, 407, the following colloquy took place between court and counsel:

"Abbott, for defendant, argued in support of a demurrer to a declaration which stated that plaintiff was the proprietor of the one coach and the defendant of another, and that an agreement was made between them that they should not run in opposition to each other, but should each charge the same price to passengers, and this stipulation, it was urged, was in restraint of that competition in trade which is so conducive to the interest of the public and was consequently void.

"Ellenborough, C. J.: How can you contend that it is in restraint of trade? They are left at liberty to charge what they like, though not more than each other, and, by agreement, particular days and times for each to run in the week were fixed. This is merely a convenient mode of arranging two concerns which might otherwise ruin each other.

"Abbott then observed that there was a stipulation not to be engaged in other coach concerns or in any other coach. The whole deed upon over was before the court, and the court will not support this contract. There is no consideration but the mutual restraint. There is no averment that they continued to run their coach. There was no partnership interest between the plaintiff and the defendant, and they were proprietors of different coaches, and the covenant was in restraint of the other coach, though the parties covenanting might cease to run.

"Bailey, J.: If one cease to run, is not the contract then at an end? And if you do not perform your part of the contract, you should show your excuse. A general restraint is bad.

"Ellenborough, C. J.: If this agreement could be sustained, then a covenant in an indenture of partnership, that neither of the parties should be engaged in any other business with any other persons would not be good, because it might prevent the
902 public from having the industry in another business. Each contracting party has one day to work his particular coach, nor is there any limitation as to the size of the coach, the defendant may have a long coach. This agreement does not preclude a third or more persons from starting in opposition to plaintiff and defendant".

Gale v. Reed was as follows;

Defendant made a contract with plaintiffs, by the terms of which among other things he agreed to transfer his business of cord-making to plaintiffs — he further agreed not to engage in such business during his lifetime, except for the government, or any public board.

The breach assigned is:

"That after the making of the indenture the defendant carried on the business of a rope-maker, and made cordage for divers persons other than by virtue of any contract which the defendant had entered into after the making of the said indenture, to make cordage, i. e. for government contrary to his covenant."

"ELLENBOROUGH, C. J.: It has been contended on the part of the defendant, that the covenant on which the breaches have been assigned is void, as being a contract made in particular restraint of trade, will have adequate consideration to the party restrained upon the authority of Mitchell v. Reynolds, 1. P. Wms. 181, and other cases. * * * Laying, therefore, this objection of form out of the case, it remains to be considered whether the covenant in question be void, upon the ground already mentioned, viz:, as being a particular restraint of trade, without adequate consideration. And the object and intention of the parties to this indenture appear to have been to devolve upon and exclusively to appropriate to the Gales, the plaintiffs, all the beneficial private trade of the defendant in this business of rope-making; leaving him at liberty to make and execute on his own account such contractors for cordage as he had made or might enter into with the government or any of
903 the public boards. The indenture uniformly contemplates this trade as a trade carried on upon credit only. The only compensation which the indenture provides for the defendant as the consideration for his restraint, and for the benefit to be derived for the plaintiffs in this respect, is a payment and allowance of two shillings on every hundredweight of cordage.

* * * * * * *

"Supposing the former part of this covenant to be, for the reasons given, properly narrowed by the terms of dealing to which it refers, it will hardly be contended that the more general words to be found in the latter part of the same covenant shall not be restrained and qualified by the same context. The words are 'and shall not nor will employ any other person or persons whomsoever to make any other cordage, or any part thereof, under any pretense whatsoever.' To construe them according to the strict letter would impose a restraint without compensation to the party restrained, and to the possible prejudice of the public, whereas to construe them with reference to the immediately antecedent words of the covenant in question, and the true scope and object of the whole indenture, renders the sense uniform and consistent throughout, makes the compensation and restraint commensurate with each other, and obviates the possible inconvenience, both public and private, which might result from a different construction. And this mode of construction is agreeable to the received rules and maxims, as well as to the authorities of law for as is said in Plowd. 18: 'The scope and end of every matter

is principally to be considered; and if the scope and end of the matter be satisfied, then is the matter itself and the intent thereof also accomplished.'

"Feeling ourselves therefore warranted, by these and other authorities of law, in narrowing, according to the intention of the deed, the general words of the restrictive covenant to those cases of restraint only in which the party restrained can have the stipulated benefit for his restraint, and the party in whose favor the
904 restraint is created, shall choose to avail himself of the restraint imposed upon the other, the covenant in question will stand clear of the objection made to it, as being particular restraint of trade without adequate consideration, and that objection being removed out of the way (as for the reasons above stated we think it is), the plaintiff is entitled to judgment."

In Central Shade-Roller Co. v. Cushman (143 Mass. 353) 9 N. E. 629, it was held that where several parties, severally engaged in the business of manufacturing and selling balance shade-rollers, for the purpose of avoiding competition, organize themselves into a corporation, and severally enter into an agreement with the corporation, so organized, that all sales of the shade-roller shall be made in the name of the corporation, and at once reported to it, that, when either party shall establish an agency in any city for the sale of a roller made exclusively for that purpose, no other party shall take orders for the same roller in the same place; and that prices for rollers of the same grade, made by different parties, shall be the same, and shall be, according to a schedule contained in the contract, subject to changes which may be made by the corporation upon recommendation of three-fourths of the stockholders, the agreement is valid and not void as in restraint of trade.

These two last cases seem to fully support the contention of respondents; but there are two reasons why they are not controlling authorities in the case at bar.

First, because they arose at a time when the industrial, commercial and transportation institutions of the country were numerous, comparatively small, with limited means and restricted trade. Under those conditions the effects of such combinations as those mentioned in those cases were so small and insignificant, the common law seemed to have ignored them, the rules of which were not near so stringent as are the provisions of our anti-trust statutes. But the extraordinary growth of those institutions in modern times, with capitalizations and assets reaching up into the hundreds of millions of dollars, few in number, driving and consuming small competitors as the
prairie fire consumed the dry grass, with business girdling
905 the globe and extending from pole to pole, presents a totally different trade condition in this country from that which existed then.

Let three or four of those gigantic institutions enter into such combinations as those mentioned in those cases, regarding any line of commodities, and the effect would be instantly felt by the entire country, monopolies would spring up, production and distribution would be curtailed, commerce would be restrained, prices would go

up, and living expenses would increase; while, upon the other hand the smaller industrial institutions would decrease in numbers; laborers would be thrown out of employment; the small produce and dealer would be crushed by sheer force of capital; and stagna tion and starvation would befall all who were so unfortunate as no to belong to the combinations.

Under these changed conditions, in my judgment, even the com mon law rules against restraint of trade *and* are fully ample to abat and prohibit such combinations.

Clearly those cases are not in harmony with the great mass o authority upon that subject in this country and in England. Finch v. Granite Co., 187 Mo. 244.

Second. Because, conceding the common law was not ample t control such combination, yet our trust statutes were enacted for the purpose of aiding and supplementing the common law along those lines; but the common law rule as announced by those decisions i in direct conflict with our statutes upon that subject.

It is perfectly apparent by reading those cases and then by read ing our anti-trust statutes, that they are diametrically opposed t each other. Those cases sustain contracts made in restrain
906 of trade, while the statutes declare all such contracts to b null and void.

The Massachusetts case seems to have gone off on the ground that the shade-rollers were not articles of prime necessity; but our statutes make no distinction as to the kind of goods affected by the trust agreement. But suppose it did, it cannot be contended that the products of petroleum are not articles of prime necessity for the people.

We are, therefore, of the opinion that the Master properly con sidered all of these facts in connection with all the other facts and circumstances disclosed by the evidence in the case.

It is next contended by counsel for respondents, that at common law they had the legal right to cut prices on sales of oils, or to give rebates from those prices, in order to secure the trade from their competitors.

This contention calls for a review of the authorities upon that question.

Mogul Steamship Line (21 Q. B. Div. 544), affirmed in the Court of Appeals (23 Q. B. D. 598), and in the House of Lords (L. R. App. Cas. 1892 25), is the leading case upon this subject. The facts as stated in the syllabus were:

The defendants, who were firms of shipowners trading between China and Europe, with a view of obtaining for themselves a mo nopoly of the homeward tea trade and thereby keeping up the rate of freight, formed themselves into an association, and offered to such merchants and shippers in China as shipped their tea exclusively in vessels belonging to members of the association a rebate of per-cent on all freights paid by them.

Lord Coleridge, C. J. (21 Q. B. D., 544, 552, 553, 554) at *nisi prius* said:

"The defendants are traders with enormous sums of money em

barked in their adventures and naturally and allowably desirous to reap a profit from their trade. They have a right to push
907 their lawful trade by all lawful means. They have a right to endeavor by lawful means to keep their trade in their own hands and by the same means to exclude others from its benefits, if they can. Amongst lawful means is certainly included the inducing by profitable officers customers to deal with them rather than with their rivals. It follows that they may, if they think fit, endeavor to induce customers to deal with them exclusively by giving notice that only to exclusive customers will they give the advantage of their profitable offers. I do not think it matters that the withdrawal of the advantages is out of all proportion to the injury inflicted on those who withdraw them by the customers, who decline to deal exclusively with them, dealing with other traders. It is a bargain which persons in the position of the defendants here had a right to make, and those who are parties to the bargain must take it or leave it as a whole. Of coercion, of bribing, I see no evidence; of inducing, in the sense in which the word is used in the class of cases to which Lumley v. Gyge (2 E. & B. 216), belongs, I see none either. One word in passing only on the contention that this combination of the defendants was unlawful because it was in restraint of trade. It seems to me is was no more in restraint or trade, as that phrase is used for the purpose of avoiding contracts, than if two tailors in a village agreed to give their customers five per-cent off their bills at Christmas on condition of their customers' dealing with them and with them only. Restraint of trade, with deference, has in its legal sense nothing to do with this question. * * * It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay, the trade of a particular place or district being possibly very limited, what one man gains, another loses. In the hand-to-hand war of commerce, as in the conflicts of public life, whether at the bar, in Parliament, in medicine, in engineering (I give examples only), men fight on without much thought of others, except a desire to excel or defeat them. Very lofty minds, like Sir Philip Sidney with his cup of water, will not stoop to take an advantage, if they think another wants it
908 more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business. The line is in words difficult to draw, but I cannot see that these defendants have in fact passed the line which separates the reasonable and legitimate selfishness of traders from wrong and malice. In 1884 they admitted the plaintiffs to their conference, in 1885 they excluded them, and they were determined, no doubt, if they could, to make the exclusion complete and effective, not from any personal malice or ill will to the plaintiffs as individuals, but because they were determined, if they could, to keep the trade to themselves; and if they permitted persons in the position of the plaintiffs to come in and share it they thought, and honestly, and,

as it turns out, correctly thought, that for a time at least there would be an end of their gains."

In affirming this view (23 Q. B. D. 598, 614, 616, 620, 625) in the court of appeal, Bowen, L. J., said:

"They have done nothing more against the plaintiffs than to pursue to the bitter end a war of competition waged in the interest of their own trade. To the argument that a competition so pursued ceases to have a just cause or excuse when there is ill will or a personal intention to harm, it is sufficient to reply (As I have already pointed out) that there was here no personal intention to do any other or greater harm to the plaintiffs than such as was necessarily involved in the desire to attract to the defendants' ships the entire tea freights of the ports, a portion of which would otherwise have fallen to the plaintiff's share. I can find no authority for the doctrine that such a commercial motive deprives of 'just cause or excuse' acts done in the course of trade which would but for such a motive be justifiable. So to hold would be to convert into an illegal motive the instinct of self-advancement and self-protection, which is the very incentive to all trade. To say that a man is to
909 trade freely, but that he is to stop short at any act which is calculated to harm other tradesmen, and which is designed to attract business to his own shop, would be a strange and impossible counsel of perfection. But we were told that competition ceases to be the lawful exercise of trade, and so to be a lawful excuse for what will harm another, if carried to a length which is not fair or reasonable. The offering of reduced rates by the defendants in the present case is said to have been 'unfair'. This seems to assume that, apart from fraud, intimidation, molestation, or obstruction of some other personal right *in rem* or *in personam*, there is some natural standard of 'fairness' or 'reasonableness' (to be determined by the internal consciousness of judges and juries) beyond which competition ought not in law to go. There seems to be no authority, and I think, with submission, that there is no sufficient reason for such a proposition. It would impose a novel fetter upon trade. The defendants, we are told by the plaintiff's counsel, might lawfully lower rates provided they did not lower them beyond a 'fair freight' whatever that may mean. But where is it established that there is any such restriction upon commerce? And what is to be the definition of a 'fair freight?' It is said that it ought to be a normal rate of freight, such as is reasonably remunerative to the shipowner. But over what period of time is the average of this reasonable remunerativeness to be calculated? All commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a fuller harvest of profit in the future; and until the present argument at the bar it may be doubted whether shipowners or merchants were ever deemed to be by law bound to conform to some imaginary 'normal' standard of freights or prices, or that Law Courts had a right to say to them in respect of their competitive tariffs, 'Thus far shalt thou go and no further.' To attempt to limit

English competition in this way would probably be as hope-
910 less an endeavor as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can in my opinion be warranted. A man is bound not to use his property so as to infringe upon another's right. *Sic utere tuo ut alienum non laedas.* If engaged in actions which may involve danger to others, he ought, speaking generally, to take reasonable care to avoid endangering them. But there is surely no doctrine of law which compels him to use his property in a way that Judges and juries may consider reasonable; see Chasemore v. Richards (7 H. L. C. 349). If there is no such fetter upon the use of property known to the English law, why should there be any such fetter upon trade? * * * In the result, I agree with Lord Coleridge, C. J., and differ, with regret, from the Master of the Rolls. The substance of my views is this, that competition, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities as I have above referred to, gives rise to no cause of action at common law. I, myself, would deem it to be a misfortune if we were to attempt to prescribe to the business world how honest and peaceable trade was to be carried on in case where no such illegal elements as I have mentioned exist, or where to adopt some standard of judicial 'reasonableness' or of 'normal' prices, or 'fair freights,' to which commercial adventurers, otherwise innocent, were bound to conform."

Fry, L. J., said:

"The defendants did not aim at any general injury of the plaintiffs' trade, or any reduction of them to poverty or insolvency; they only desired to drive them away from particular ports, where the defendants conceived that the plaintiffs' presence interfered with their own gain. The damage to be inflicted on the plaintiffs was to be strictly limited by the gain which the defendants desired to win for themselves."

In the House of Lords (L. R. App Cas., 1892, 25, 40, 43, 48, 49, 50, 51, 54, 58-59), Lord Halsbury, L. C., said:

911 "I am of opinion, therefore, that the whole matter comes round to the original proposition, whether a combination to trade, and to offer, in respect of prices, discounts and other trade facilities, such terms as will win so large an amount of custom as to render it unprofitable for rival customers to pursue the same trade, is unlawful, and I am clearly of the opinion that it is not."

Lord Watson said:

"I cannot for a moment suppose that it is the proper function of English courts of Law to fix the lowest prices at which traders can sell or hire, for the purpose of protecting or extending their business, without committing a legal wrong which will subject them to damages. Until that becomes the law of the land, it is, in my opinion, idle to suggest that the legality of mercantile competition ought to be gauged by the amount of the consideration for which a competing trader thinks fit to part with his goods or to accept employment. * * * The only means by which they endeavored to obtain shipments for their vessels, to the exclusion of others, was the

inducement of cheaper rates of freight than the appellants were willing to accept."

Lord Bramwell said:

"If there were two shopkeepers in a village and one sold an article at cost price, not for profit therefor, but to attract customers or cause his rival to leave off selling the article only, it could not be said he was liable to an action. I cannot think that the defendants did more than they had a legal right to do. I adopt the vigorous language and opinion of Fry, L. C.: 'To draw a line between fair and unfair competition, between what is reasonable and unreasonable, passes the power of the courts.'"

Lord Morris said:

"It is not illegal for a trader to aim at driving a competitor out of trade, provided the motive be his own gain by appropriation of the trade, and the means he used be lawful weapons. Of the
912 first four of the means used by the defendants, the rebate to customers and the lowering of the freights are the same in principle, being a bonus by the defendants to customers to come and deal exclusively with them. The sending of ships to compete, and the indemnifying other ships was 'the competition' entered on by the defendants with the plaintiffs. The fifth means used, viz., the dismissal of agents, might be questionable according to the circumstances; but in the present case, the agents filled an irreconcilable position in being agents for the two rivals, the plaintiffs and the defendants. Dismissal under such circumstances became, perhaps, a necessary incident of the warfare in trade. All the acts done, and the means used by the defendants were acts of competition for the trade. There was nothing in the defendants' acts to disturb any existing contract of the plaintiffs, or to induce anyone to break such. Their action was aimed at making it unlikely that anyone would enter into contracts with the plaintiffs, the defendants offering such competitive inducements as would probably prevent them. The use of rhetorical phrases in the correspondence cannot affect the real substance and meaning of it. * * * I cannot see why judges should be considered specially gifted with prescience of what may hamper or what may increase trade, or of what is to be the test of adequate remuneration. In these days of instant communication with almost all parts of the world, competition is the life of trade, and I am not aware of any stage of competition called 'fair' intermediate between lawful and unlawful. The question of 'fairness' would be relegated to the idiosyncrasies of individual judges. I can see no limit to competition, except that you shall not invade the rights of another."

Lord Field said:

"It is absolutely unnecessary to consider whether these grounds were morally or commercially justifiable. They were not unlawful, and they were of a nature legitimately, if not necessarily, to be taken into account in carrying on the respondents' business with profit."

913 Lord Hannen said:

"The object of every trader is to procure for himself as

large a share of the trade he is engage- in as he can. If then the object of the defendants was legitimate, were the means adopted by them open to objection? I cannot see that they were. They sought to induce shippers to employ them rather than the plaintiffs by offering to such shippers as should, during a fixed period, deal exclusively with them the advantage of a rebate upon the freights they had paid. This is, in effect, nothing more than the ordinary form of competition between traders by offering goods or services at a cheaper rate than their rivals."

In Lough v. Outerbridge (143 N. Y. 283; 38 N. E. Rep. 292, 296) it was said of the right to grant rebates when not prohibited by statute:

"The monopoly which the law views with disfavor is the manipulation of a business in which the public are interested in such a way as to enable one or a few to control and regulate it in their own interest, and to the detriment of the public, by exacting unreasonable charges. But when an individual or a corporation has established a business of a special and limited character, such as the defendants in this case had, they have a right to retain it by the use of all lawful means. That was what the defendants attempted to do against a competitor that engaged in it, not regularly and permanently, but incidentally and occasionally. The means adopted for this purpose was to offer the service to the public at a loss to themselves whenever the competition was to be met, and, when it disappeared, to resume the standard rates, which, upon the record, did not at any time exceed a reasonable and fair charge. I cannot perceive anything unlawful or against the public good in seeking by such means to retain a business which it does not appear was of sufficient magnitude to furnish employment for both lines."

In Walsh v. Dwight, (40 App. Div. 513; 58 N. Y. Supp., 91, 92, 93, 94) it was, as stated in the syllabus, decided:

914 "An agreement by a manufacturer with his customers to give them a rebate if they should refuse to sell his article, or other similar articles, at less than a certain price, is not a restraint of trade."

Ingraham, J., said:

"The defendants simply offered to parties purchasing their goods to make a reduction in the prices of goods sold, in consideration of the purchasers agreeing not to sell the goods at a less price than that named, and not to sell the goods of other manufacturers at a less price than that at which they agreed to sell the defendants' goods. It is difficult to see upon what ground it can be claimed that such a contract is illegal. That the defendants would have the right to establish agencies for the sale of their goods, or to employ others to sell them, at such prices as the defendants should designate, cannot be disputed. Nor can it be that a manufacturer of merchandise cannot agree to sell to others upon condition that the vendees, in selling at retail, should charge a specified price for the goods sold, or should sell only the manufactured products of the manufacturer. If a dealer in articles of this kind, for his own advantage agrees to confine his business to a particular line of goods, or agrees with the

manufacturer to charge a particular price for the articles which he sells in his business, such an agreement is not illegal, as in restraint of trade or as tending to create a monopoly, as there is nothing in the agreement to prevent others from engaging in the business or the manufacturers of other articles from selling their products to anyone who is willing to buy. There is nothing to prevent an individual from selling any property that he has at any price which he can get for it. * * * There is nothing in this contract that restrains or prevents competition in the supply or the price of any article or commodity. The act is entitled, 'An Act to prevent monopolies in articles of general necessity,' and it makes illegal a contract or combination whereby competition in the State of New
915 York in the supply or price of any article or commodity of common use may be restrained or prevented for the purpose of advancing prices. This act did not have the effect of preventing a manufacturer from fixing the price at which his article should be sold, or from making an agreement with those persons who acted as the jobbers or retailers of his manufactured articles that they would deal exclusively in his merchandise, or would not sell the merchandise of other persons at a less price than that for which his product was sold. The act was evidently intended to prevent manufacturers or dealers in any article or commodity of common use from combining together to advance the price of such article or commodity, by which competition in the supply or price of the same would be restricted or regulated; but a contract by a single manufacturer as to the price at which his goods, when manufactured, should be sold by those selected by him for the purpose of sale or distribution, would not be a contract by which competition in the supply or price of the commodity would be restrained or prevented. All of the manufacturers could compete with these defendants in the sale of these goods, or the making of a contract such as was made by the defendants. The contract in question simply gave to such of their customers as chose to make the agreement with them an advantage as to price for which the goods were purchased which those who refused to come to such an understanding did not share. That such an agreement is not illegal has been settled by a long line of authorities."

In In re Greene, 52 Fed. Rep. 104, 116, 117, 118, Mr. Justice Jackson said:

"Was the arrangement with the Boston purchasers, as to making them a rebate upon the conditions stated, an attempt to monopolize any part of the trade and commerce among the states in distillery products? It is not alleged, nor is it to be inferred from anything that is set forth, that said purchasers bound themselves, or entered into any contractual obligations or understanding, to buy
916 their distillery supplies exclusively from the distributing agents of said Distilling & Cattle Feeding Company. They were left at perfect liberty to purchase when, where, or from whom they pleased. No contractual or other restraint was placed upon them. Upon certain conditions, which it was entirely optional with them to comply with or disregard, a rebate was promised by the seller. Such an arrangement does not amount to a contract to pur-

chase exclusively from said distilling company or its distributing agents. But, suppose it did, there was nothing in such an agreement unlawful or in contravention of the statute. The promise of a rebate, as an inducement for exclusive trading, certainly does not constitute an 'attempt to monopolize,' when the purchaser is left at liberty to buy where he pleases, and when all other sellers of the article are left unrestrained in offering the same, or greater, inducements. As to the remaining condition upon which the rebate was to be p-yable, the same observation may be made. The purchasers were placed under no contractual or other restraint in respect to the price at which they should sell. They were simply offered a rebate, as an inducement not to undersell the vendor's distributing agents, two of whom were located at Boston, Mass. The arrangement relied on, considered either in detail or as a whole, involved no 'attempt to monopolize any part of the trade or commerce among the states.' The rebate promised, upon condition of exclusive purchases and not underselling the vendor's distributing agents, was a legitimate method of inducing trade; but the means thus employed in no way operated to prevent or restrain others from offering the same, or greater, inducements. The condition as to not selling at lower prices than those of the distributing agents may have had a tendency to maintain prices but that would not have been an attempt to monopolize trade. The inducements offered for the exclusive trade, and to sell at no lower prices than the price list of the distributing agents, was not prejudicial to the public. It was in no way contrary to public policy, or an unlawful restraint of trade, as will be seen from
917 the authorities hereinafter referred to * * * The matter of the promised rebate upon the same conditions as set forth in the second count, which is charged to have been a contract in restraint of trade and commerce among the states, and between the State of Massachusetts and other states, does not constitute any offense against the United States, or in any way contravene the first section of the Act of July 2, 1890, because there was actually no contract which bound, or attempted to bind, the Massachusetts purchasers of alcohol, as to where or from whom they could make further purchases during the period stated, nor as to the price or prices at which they should sell. They were simply offered an inducement in respect to those matters, which they were at perfect liberty to comply with or decline. They were not restrained by any contractual obligation during the stipulated period. The agreement was wholly unilateral during that period. Upon compliance with the conditions as alleged in the fourth count, they were entitled to the rebate; but such compliance had no retroactive operation to create a valid and subsisting contract between the parties prior thereto, or during the period intervening between the date of the promise and the full compliance with the conditions on which the rebate was to be paid. During that period there was between the parties no contract in restraint of trade. But suppose the arrangement could by any possibility be construed into a contract between the parties from the date of the promise, or during the stipulated period, it could not be held to be a contract in restraint of trade. It is not deemed neces-

sary to review the authorities upon the subject of contracts in restraint of trade, nor would it be at all profitable."

In re Corning, 51 Fed. Rep., 201, 211, involved the question, the government contending that the granting of rebates was a violation of the Sherman Anti-Trust Act. Judge Ricks, in denying the contention, said:

"Such dealers were offered the rebate as an inducement to purchase exclusively from the defendants, and to sell at the prices
918 defendants fixed; but there is no contract averred by which the dealers obligated themselves to do so. In what respect, then, are these acts charged different from the customary efforts of manufacturers or dealers to increase the sale of their products and push their business by the many articles of trade? There are no contracts averred, as between the defendant and their customers, which are in restraint of trade. Their acts are rather intended to increase their trade, but not by restraining the liberty of the customer to deal with others, if he wishes to, or can do so, with advantage to himself. If these acts are illegal and in restraint of trade, and if they constitute a monopoly under this act, it may well be denominated an act to restrain legitmate enterprise, and limit, and qualify the ownership in property. The acts charged are common and frequent to many branches of manufacture and trade, and if the defendants are guilty in the manner of making sales of their products as set forth in the indictment, the act is more sweeping in its provisions than ever contemplated by Congress, as manifestly appears from the debates in the senate when the act was before it for consideration."

In re Terrill, 51 Fed. Rep., 213, 215, was a like case. Judge Lacombe said:

"The points of law arising upon this indictment were all carefully considered by Judge Ricks in his opinion (filed June 11, 1892, N. Dist. Ohio) on application for a removal in In re Corning, 51 Fed. Rep. 205. In that opinion I entirely concur. * * * During that period they bought such products only from certain named dealers in a limited number of states, and sold only at prices fixed by the defendant; but they did so only because they chose to—because the offer of a rebate to purchasers who would thus conduct their business was an inducement operating upon their self interest. No obligation of any kind constrained them to do so during that entire period, certainly, no contract restrained them, for there was no contract in existence. They were entirely free to buy
919 from whom they pleased, and to sell at any price they chose. The statute does not prohibit the offering of special inducements to such purchasers as shall make all their purchases from a single concern, and shall sell only at the prices fixed by it, even though those inducements be so favorable as to accomplish their object.

In Ex Parte Benson, 18 S. C. 38; 44 Amer. Rep., 564, 567, 568, it was said:

"Independent of statutes and provisions in their charters restricting corporations within certain limits, they stand in the com-

munity as other individuals invested with the power to contract and be contracted with, and the validity of their contracts depends upon the same principles which govern in contracts between natural persons. It is too vague to say, in general terms, that the contract is inequitable and against public policy, and therefore not enforceable. To be void on such grounds it must run counter to some known principle of equity or contravene some well established doctrine of public policy forbidding it. We do not know that this contract was obnoxious to any of these objections; nor in the face of the testimony of the experienced superintendent who gave it, can we say that it was unnecessary. The cotton which he brought to the head of his road at Anderson Court House was grown in the State of Georgia, at a distance from Anderson. The Savannah river, running between Anderson and Hartwell, was its natural outlet to market, and, no doubt, afforded cheaper transportation. With these obstacles in the way, it required some inducement to be held out so as to bring this cotton to the Greenville road, and so long as the charges against others were not unreasonable and in no way increased by the rebate offered to it, what ground is there for the courts to interfere? It is the province of the court to enforce contracts, not to destroy them."

In dealing with this subject it was in Cowden v. Pacific C. S. S. Co., 94 Cal. 470; 20 Pac. Rep. 873, 874, 875, said:

920 "The fundamental and statute law of the various states upon this subject appears to have been founded upon the principles embodied in the early acts of Parliament pertaining to the conduct and control of railways as common carriers, rather than upon the common law of England. Indeed, we have been able to obtain but few direct adjudications from English courts upon this question, owing to the fact that it would seem the business of inland common carriers in that country was not a matter of great concern until railroads were operated; and, immediately subsequent to that great epoch in the world's progress, statutory enactments followed, entirely taking away from the courts the necessity of any further application of the common law rights and remedies. If the common law were as appellant here contends it to be, there would have been no necessity for parliament to have enacted these stringent 'equality clauses' as they were termed. * * * During the progress of the argument in Baxendale v. Railway Co., 4 C. B. (N. S.) 78 Justice Byles said: 'I know of no common law reason why a carrier may not charge less than what is reasonable to one person, or even carry him free of all charge.'"

(3) What has been said is peculiarly applicable to a private business as distinguished from a public employment. This, in Beale & Wyman on Railroad Rate Regulation, Section I, it is said:

"In private businesses, one may sell or not, as one pleases, manufacture what quality one chooses, demand any price that can be got, and give any rebates that are advantageous. But in public businesses one must serve all that apply without exclusive conditions, provide adequate facilities to meet all the demands of the consumer, exact only reasonable charges for the services that are

rendered, and between customers under similar circumstances make no discriminations."

In Whitwell v. Continental Tobacco Co. 60 C. C. A., 290, 125 Fed. Rep. 454, 461, Judge Sanborn said:

"The tobacco company and its employé were not required, like competitors engaged in public or quasi public service, to sell to all applicants who sought to buy, or to sell, to all intending purchasers at the same prices. They had the right to select their customers, to sell and to refuse to sell to whomsoever they chose, and to fix different prices for sales of the same commodities to different persons. In the exercise of this right they selected those persons who would refrain from handling the goods of their competitors as their customers, by selling their products to them at lower prices than they offered them to others."

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These authorities clearly sustain the proposition, that, at common law, traders, manufacturers and common carriers have the right to give rebates to their patrons and customers in order to secure and retain their business. But it will be seen by reading those cases that the rebates were given in order to secure business and not for the purpose of stifling competition, or as a means by which to control, fix and maintain prices.

It has not, and cannot be seriously contended, that the legislature does not possess the power to enact laws preventing all rebates being made when the object of which is in restraint of trade or which tends to fix and maintain prices.

If therefore rebates are used as a means in pursuance of a combine agreement in restraint of trade, or for the purpose of fixing and maintaining prices, then such combination or agreement is prohibited by the statutes, and is, of course, void on that account.

State ex inf. vs. Armour Packing Co. 173 Mo. 356.

Respondents, however, contend that there is no evidence in this record which tends to show that the rebates were made for any such purposes.

We are unable to lend our concurrence to that contention.

When we consider the system of espionage established and maintained by them, over the business of their competitors, the independent oil companies, and thereby acquired perfect knowledge of their business; and then as the evidence tends to show, by the means of rebates, prevented all of them from doing more than ten to fifteen per cent of the aggregate oil business of the state, and by the same means fixed and maintained the prices at which all oils were sold in the state—not only by themselves but also by all of the independent companies—then it is difficult to see how it can be logically contended that the rebate system maintained by respondents does not tend to prove the unlawful conspiracy and combination, in restraint of trade, complained of in the information.

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We are of the opinion that the rebates made in the manner disclosed by the evidence in this case tends to show there was a combination or agreement existing between respondents, which is violative of the anti-trust statutes of this state.

When we view this case as an entirety, we are unable to see how the Master could have honestly reached any other conclusion than that found in his report filed herein.

Let us take a bird's eye view of this case.

The Standard Oil interests of this country are represented by some eight or ten subsidiary corporations, diffused throughout the states, and are matrixed in, if I may use that word, and operated from the Standard Oil Company of New Jersey, with a capitalization of $110,000,000. These minor companies, including the respondents, are but parts of, and derive their power, character and business policies and directions from that mother company.

The New Jersey Company either owns all or the majority of the stock of all of said minor companies. It elects their officers and directors, and formulates and outlines their business policies. The officers and directors thus chosen carry out those policies to the letter, with daily, monthly and annual reports of their stewardship. The office of the New Jersey Company is located at 26 Broadway, New York City; and each and all of these minor companies
923 have a representative located in that same office who conduct all business transactions which take place between them and that company. That company also has located in the office mentioned representatives who inspect and audit the books and papers of all of said companies and otherwise assist and participate in the arrangement and control of their business. In other words, the New Jersey Company keeps in touch with and is constantly informed of the business policies and transactions to the minutest detail.

The New Jersey Company either through itself or through some one of its subsidiary companies, furnishes to all of said companies all the oils and the products of petroleum handled by them and neither it nor they will sell any of such commodities to any other, or independent company, except in a few instances where they have offered to make such sales at retail prices.

The New Jersey Company also furnishes the pipe, lines and tank cars through which and in which all of the oil handled by those companies is transported, from one point to another, with exception of the Waters-Pierce Company; it owns and uses about one-half of the tank-cars required to transport its oils, and the New Jersey Company furnishes the remainder. The record also discloses the fact that none of these companies will transport or permit their cars to be used for the transportation of oils for any independent company.

This record also discloses the fact, that there has never been any genuine competition for trade between any of these companies, not cutting of prices; while, upon the other hand, they have waged the most relentless war and competition against each and all of the independent companies. In order to drive out all competitors and to monopolize the entire trade, they inaugurated and carried on a perfect system of espionage, by which they acquired a complete knowledge of their competitors' business, and followed almost every barrel of independent oil shipped over a railroad to the very door
924 of the dealer, and there, by means of cutting prices offering rebates, misrepresentation and deception, attempted to have

the sale countermanded and to prevent him from purchasing independent oil in the future. In furtherance of that system the New Jersey Company purchased the Schofield, Shurmer & Teagle Oil Company, and had it reorganized under the name of the Republic Oil Company, whose chief office was to follow up the business of the independent companies, and, under the guise of being an independent company and by means of rebates, fraud and deception, waged a most vigorous competition against them, in all districts where they competed with the other respondents, while the latter refused to compete for business against each other, or to reduce prices to meet those made by the Republic Company, as a means of fighting the independents.

In other words, the Indiana Company and the Waters-Pierce Company maintained their territorial division of the state, and thereby indirectly agreed not to compete with each other for business herein, which was equivalent to entering into a contract in restraint of trade, and thereby enabled them to fix and maintain prices at which they sold oils in this state. If the independents encroached upon the business of either, and reduced the aggregate amount of its sales, or reduced the price of oils, then the Republic Company was set upon the offending independents, and practically driven out of business by selling their customers oils at reduced prices or by giving rebates.

While this vigorous competition was going on between the independents and the Republic Company, the Indiana Company and Waters-Pierce Company were living up to their understanding and agreement and pursuing their fixed business policies in the even tenor of their way, maintaining prices at which they sold oils, and declining to compete with each other for business. And when the Republic Company had sufficiently chastised the independents, and thereby curbed their desire and ambition to increase the volume of their business, by the reduction of price of oils or otherwise,
925 it would then practically retire from the field of operation and eagerly await the next combat with the independents if, perchance, any one of them was so timorous as to challenge the monopoly of those two companies by seeking any portion of their trade. The office and the important part played by the Republic Company in the scheme is made more apparent by the declaration of one of its officers, to the effect that this suit exposed the ownership of the company, and it had to go out of business, because it had served its purpose, and there was nothing left for it to do; meaning, of course, that the Standard interest could no longer deceive and impose upon the public by the means of that company. And as a necessary sequence to that condition, the Republic Company attempted to voluntarily retire from the state, and moved the Master to dismiss the cause as to it, which he refused to do, and it has renewed that motion here, which has received consideration in another portion of this opinion.

When the foregoing facts are viewed in the light of the common ownership of the stock of all the Standard Oil companies, it does not require a very great stretch of the imagination to see why such close

and intimate business schemes and relations have existed so long and harmoniously among them.

The common interest running through all of those companies is responsible for their formation and business schemes and policies, and lead up to and induce the Standard interest, including the respondents, to divide the state in twain; to furnish oil and transportation for each other; to decline to sell to or transport oils for the independents; and to fight them with the Republic Company by a system of espionage and rebates. The direct and inevitable effect of those facts, which are not seriously disputed, was to create, by indirection, a pool, trust and combination in restraint of trade, and to fix and maintain prices at which respondents sold the products of petroleum in this state. There is no logical escape from the conclusion that it was the intention of respondents and of the
926 other Standard Oil companies, that those things agreed to among themselves should and would have the effect of producing a trust and combination among them in restraint of trade and in violation of our anti-trust statutes.

It stands out admitted in bold relief, that the Indiana and Waters-Pierce Companies are both engaged in the sale and delivery of the same kind and grades of oils; that they are not competitors for business, notwithstanding the fact that both are well equipped and amply able financially to vigorously compete therefor. This lack of competition between these two gigantic institutions is not due to the fact that they are destitute of competitive instincts, or indifference as to the expansion of their trade, because they abundantly show both of those admirable qualities in their business contracts with the "independents;" but it is confessedly due to an agreement made and entered into between them, by which one sells in the north and the other in the south half of the State. If that agreement is not in restraint of trade and in violation of the letter and spirit of the anti-trust laws, then words have lost their meaning, contracts their potency, and the law its majesty. This combination confessedly was conceived in and born of the common interest of those two companies, and for the very purpose of preventing competition between them, and to maintain prices and enhance the profits of each, which it has done beyond the fondest dreams of either. Their business has grown from almost nothing in 1878 to gigantic proportions. The Waters-Pierce Company has assets worth $12,000,000, and the name and good will of the concern is valued at about $35,000,000, and is paying dividends of six or seven hundred per cent upon a capitalization of $100,000. It is clearly inferable from this record that the Indiana Company has fared equally as well if not better than has the Waters-Pierce Company.

Can it be supposed for a moment that such phenomenal results could have been accomplished by them if they had been engaged in open competition with each other? Certainly not. They knew that, and their object and purpose in entering into the combination was to monopolize the trade and maintain prices, which they did against all other competitors.

The Waters-Pierce Co. fixed and maintained the prices not only

for itself but also for the Republic Company and for all
927 the independent dealers, and monopolized from eighty-five to ninety-five per cent of the volume of the oil business within its territory; while the Indiana Company did a little better in the north half of the State. It sold in that territory from ninety to ninety-eight per cent of the oil consumed therein, and fixed the prices for all dealers.

If the statutes were not intended to apply to this and similar combinations, then I would like to see a combination stated to which they do or could apply.

This combination is but one link in a chain of combinations, which include all of the Standard Oil interests, which control practically all of the crude oil of the country. That fact enabled it to fix the prices at which the Indiana and the Waters-Pierce Companies had to pay for refined oils; and upon those prices they based and fixed prices at which they and all other- sold oils to the trade and consumers. Yet it is argued that they do not fix and maintain prices.

Not only that, but the record discloses the fact that within the last decade the production of crude oil has about doubled, caused by the discovery and development of new oil fields in Kansas, Texas, Oklahoma and Indian Territory; yet notwithstanding that fact, the price of refined oils has been upward during that period, and the price of crude oils has fallen more than fifty per cent.

And this record conclusively shows that the respondents absolutely fix and maintain the prices at which refined oils sell in this State, and that they and their allies control and fix the prices at which all crude oils are sold.

928 Their purpose in forming the combination by those means, rather than by an express contract, was clearly to escape the provisions of the common law and the statutes of the state in which they operated or conducted business.

Every contract made by them; their business policies and its management; their treatment of others; and the mode and manner of acquiring and holding trade, are but the foot prints leading from the office of the New Jersey Company, No. 26 Broadway, New York City, through the various subsidiary companies, to the very hearthstone of the smallest consumers, throughout the country, including this state; and every imprint bears strong evidence of agreements and combines in restraint of trade.

No man can run faster than he makes tracks, and, in this case, as in all others, when carefully followed, the maker of them can be traced from his starting point to his place of destination.

In the case at bar we have traced every step and carefully considered every act of each and all of those companies, from the time of their organization to down to the close of the evidence of this case, and they all point to guilt, and are inconsistent with all theories of innocence.

But it is finally insisted by counsel for respondents, that Mr. Pierce of the Waters-Pierce Company had complete charge and control of

that company, and directed its business independent of all other Standard influences.

In one sense that is true. He does manage and control its business within the scope and bounds of the policies marked out by the Standard Oil Company of New Jersey, but no further. He and his
929 company are but two of the many agents of the New Jersey Company in carrying out its monopolistic schemes and combinations in restraint of trade throughout the entire country.

When we lay aside the corporate guise of these companies, and view the interested parties, their objects and purposes, it is perfectly apparent that they have a common interest; all working in harmony to that end, and are not competing with each other in any sense of the word.

Look at the Waters-Pierce Company from any view-point you may, and it is clearly seen that it is just as much a party to the trust and combine as is the Indiana Company or the Republic Company. What the one does the other does; they work hand in glove with each other, and for their mutual protection and benefit, and all of them work in harmony with the policies and for the best interest of the New Jersey Company.

In discussing a similar question this court said, in the case of State ex inf. vs. Armour Packing Co., 173 Mo. l. c. 383, that

"It is quite too plain for doubt that persons or companies who are engaged in the same line of business, in the same place, do not * * * maintain an uniform selling price, etc. * * * unless there has been an unlawful pool, trust or combination to fix and maintain prices. Such acts and circumstances and practices speak as loudly, as directly and as certainly, and tell as strong and conclusive a tale of wrong doing in those regards as any witness could possibly testify to it or any resolution formally adopted by the directors or stockholders could prove it.

"Independent, thereof, of any admissions or statements of the managers of the coolers or of the solicitors, which, however, were clearly admissible, the state has made out a case against the respondents under the facts and circumstances of the case."

"So long as the law puts the stamp of condemnation on all arrangements, agreements, pools, trusts and conspiracies to fix and maintain the price of articles of prime necessity, the courts have no option but to enforce the law."

929½ Quoting with approval from People vs. Sheldon, 139 N. Y. 251, the court says:

"A combination between independent dealers to prevent competition * * * is, in the contemplation of law, an act inimical to trade or commerce, without regard to what may be done under and in pursuance of it, and although the object of such a combination was merely the due protection of the parties against ruinous rivalry, and no attempt was made to charge undue or excessive prices; where it appears that the parties acted under the agreement, an indictment for conspiracy is sustainable."

Quoting further from the same case, the court says:

"The question is, was the agreement, in view of what might have

been done under it and the fact that it was an agreement, the effect of which was to prevent competition among the coal dealers, one upon which the law affixes the brand of condemnation. * * * The gravamen of the offense of conspiracy is the combination. Agreements to prevent competition in trade are, in contemplation of law, injurious to trade, because they are liable to be injuriously used. * * * If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing."

Quoting, with approval, from the decision in People vs. Sugar Refining Company, 121 N. Y. 582, the court says, l. c. 391:

"As corporate grants are always assumed to have been made for the public benefit, any conduct which destroys their functions, maims and cripples their separate activity, and takes away free and independent action, affects unfavorably the public interests."

The court quotes again with approval the same passage from the decision of Chief Justice Fuller in United States vs. Knight,
930 quoted in the insurance trust case, to the effect that, in order to establish a combination, "it is not essential that its results shall be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

And what was said by this court in the case of State ex inf. vs. Continental Tobacco Co., 177 Mo. l. c. 32, is particularly applicable to the role played by the Republic Oil Company in this case, which is as follows:

"The statute contemplates the existence of at least two or more corporations, individuals or partnerships, so as to agree or combine with each other to do the prohibited acts mentioned in the statute. In other words, it is intended to operate upon two or more corporations or individuals, who, so far as the public are concerned, indicate that they are pursuing an independent business, legitimate competitors, when, in fact, there is a secret agreement by which the very things condemned by the statute are accomplished. The public has rights which the law contemplates shall be respected. Neither corporations, individuals, nor partnerships are permitted to deceive or mislead the public by an apparent competition, when, in fact, none exists."

In the discussion of the question as to whether the evidence in that case showed that a trust or combination in violation of the statute or common law had been effected, the court quotes with approval from the Supreme Court of Texas in Gates vs. Hooper, 39 S. W. 1079, as to what constitutes a combination in restraint of trade or competition, l. c. 36:

"In order to constitute a trust, within the meaning of the statute, there must be a 'combination of capital, skill or acts by two or more.' 'Combination' as here used, means union or association. If there be no union or association by two or more of their 'capital, skill or acts,'

there can be no 'combination,' and hence no 'trust.' When we consider the purpose for which the 'combination' must be
931 formed, to come within the statute, the essential meaning of the word 'combination,' and the fact that a punishment is prescribed for each day that the trust continues in existence, we are led to the conclusion that the union or association of 'capital, skill or acts' denounced is where the parties in the particular case designed the united co-operation of such agencies, which might have been otherwise independent and competing, for the accomplishment of one or more of such purposes."

And the St. Louis Court of Appeals in discussing this same question, in the case of National Lead Co. vs. Grote Paint Co., 80 Mo. App. 247, l. c. 266, said:

"That the predecessor of the plaintiff, the 'National Lead Trust,' was an unlawful combination, both in purpose and fact, is sufficiently established by the nature of the agreement under which it was created and the methods and practices resorted to in furtherance of that agreement * * * "While the conclusion of the illegal purpose of the trust agreement is irresistible upon a consideration of its several provisions, and the manner in which they were carried out, it will appear from an examination of the cases that this result has been declared by every court called upon to review that agreement, or others substantially like it. State ex rel. Standard Oil Co., 49 Ohio St., 137; Distillers, etc., Co. vs. The People, 156 Ill. 448; Bishop vs. A. Preserving Co., 157 Ill. l. c. 311; People vs. N. R. C. R. Co., 121 N. Y. 582; Uncles vs. Colgate, 148 N. Y. 529; U. S. vs. Freight Ass'n, 166 U. S. 290; U. S. vs. Joint Traffic Ass'n, 171 U. S. 505. But the illegality of the organization and operation of the National Lead Trust does not involve the conclusion that the purchaser of its assets, whether a natural or artificial person, succeeded also to the status of that illegal combination under the laws enacted in this state for the punishment of pools, trusts and conspiracies. For the mere purchase by one of the assets which another has employed for an illegal purpose, does not of itself imply
932 that they will be used by the purchaser for the purpose of effectuating the objects to which they had been devoted by the seller. Such an intent on the part of the purchaser, if inferable, must be gathered from proof of all the circumstances characterizing the transaction, as well as his subsequent conduct. As to these sources of proof, the record in the case under review shows that the beneficial owners of the property were the subscribers to the National Lead Trust and holders of its certificates, and that these same persons remained the beneficial owners of the same property after it was converted into the capital of the plaintiff corporation, the only difference being that each holder of a trust certificate received in lieu thereof shares of stock in the new corporation at an agreed rate of exchange, and the further fact that the legal title to the property was put into a corporate entity of a body of nine trustees appointed under the trust agreement. The sale itself was titular rather than real. The corporation was professedly created to acquire the assets of the preceding trust. It was formed by the express authorization

of the members of the trust, and required to have 'such purposes' and 'such powers' as should be approved by the agents of the trust. * * * It was actually created and organized in the strictest conformity with the requirements of said resolution, and under a charter empowering it to carry on the business of manufacturing lead and its kindred products without restriction, and which expressly authorized it 'to purchase * * * all such stocks, bonds, securities and obligations of other companies or corporations' as might be convenient in the prosecution of its business. By the obtention of the latter and other grants of power (in its charter) the plaintiff corporation secured for itself every faculty possessed by its predecessor (the National Lead Trust) for engrossing the entire business of the country in the commodities in which it was authorized to deal. * * * If, therefore, the preceding trust was an unlawful combination under the laws of this state, as declared in the acts of 1891 (then in
933 force), it must follow that the plaintiff corporation is equally amenable to said acts, if, as the record shows the fact to be, it actually engaged through the same methods and for identical objects in a similar business to that of the former trust, unless there is something in the mere fact of the plaintiff's corporate character which exempts it from the application of the law prohibiting combinations to fix the price or quantity of products, or to restrain trade. The learned counsel for respondent seems to claim such an exemption for the plaintiff. In discussing the question thus presented, we will concede, for arugment only, that a private business or manufacturing corporation, which has no implied power as such to purchase shares of stock in rival corporations, may acquire such a right under the laws of New Jersey, if provided for in the articles of incorporation."

In the case of Heim Brewing Co. vs. Belinder, 97 Mo. 64 l. c. 68, the Kansas City Court of Appeals used this language:

It would not be contended, at least it ought not, that a lawful agreement could be made that but one member of the whole number could sell to certain persons or classes of persons. Yet the effect of the agreement is as broad as that. When the others agree not to sell to the debtor of the creditor member, they deprive the debtor of the right to buy of any other than the creditor. * * * The effect and tendency of such agreements are wrong and are not only under the ban of the statute aforesaid, but they are against public policy. * * * Any one may exercise a choice as to whom he will sell his goods, but he cannot enter into a contract whereby he binds himself not to sell, for in such instance he barters away his right of choice and destroys the very right he claims the privilege of exercising. After entering upon such agreement he is no longer a free agent." (l. c. 69.)

"The question is, what is the tendency of the agreement? and what are the opportunities for oppression which the statute is designed to suppress? It does not affect the character of the agreement proven that the brewers only intended a worthy purpose. In-
934 tention will not avail when the effect is within the statute. And it has been held by the highest authority that though

competition was consummated by the raising of prices; and even though the agreement was necessary to curb unjust or ill advised competition, yet if the effect of the agreement was within the prohibition of the law, it was void. (United States vs. Addyston Pipe Co., 54 U. S. App. 747); and that 'in order to vitiate contract or combination it is not essential that its result should be complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.' United States vs. Knight Co., 156 U. S. 16. And that, the necessary effect of the agreement is the criterion 'no matter what the intent was on the part of those who signed it.'" United States vs. Freight Ass'n, 166 U. S. 342.

"The members of the combination would perhaps deny that they entered into the agreement with a view to lessen competition, and we will assume that they did not. But does it, in fact, lessen or tend to lessen competition? Competition is the struggle between rivals for the same trade at the same time. It is self-evident that there cannot be competition unless there is trade, and so, though the popular saying is that 'competition is the life of trade,' yet it is quite certain that trade is the mother of competition, for the latter springs from the former. So, therefore, whatever restrains trade restrains competition in exact degree. One of the reasons given by the Supreme Court of Massachusetts why contracts in restraint of trade were void, was that 'they prevent competition.' Alger vs. Thacher, 19 Pick. 51. And so the same thing is said in Beach on Monopolies and Trusts, section 36. We have already seen that the agreement and combination in question were in restraint of trade and, therefore, we must hold they tended 'to lessen full and free competition.'"

935 Not only this, the Standard Oil Company of Indiana and the Waters-Pierce Oil Company possess even greater power to fix and regulate the prices of crude oil and of the refined products thereof than the evidence discloses they have exercised in the past. It is obvious from an inspection of this record that they dominate the oil industry of America, if not of Europe also. The independent producers are widely scattered over the entire country and do not co-operate together, and, consequently, they are in no position to initiate and fix prices but must follow those fixed by respondents, through the Standard Oil Company of New Jersey.

And in discussing a monopoly, Mr. Justice McKenna in National Cotton Oil Co. v. Texas, 197 U. S. 129, said:

"Its dominant thought now is to, to quote another, 'the notion of exclusiveness of unity,' in other words, the suppression of competition by the unification of interest or management, or, it may be, through agreement and concert action. And the purpose is so definitely the control of prices that monopoly has been defined to be 'unified tactics with regard to prices.' It is the power to control prices which makes the inducement of combinations and their profit. It is such power that makes it the concern of the law to prohibit or limit them."

It is the concensus of the authorities that a monopoly within the meaning of the anti-trust laws is created when as a result of any

contract or combination previously competing businesses are so concentrated into the hands of a single individual or corporation of a few individuals or incorporations, acting in concert, that they thereby have the power to practically control the prices of commodities, and thus practically suppress competition.

National Cotton Oil Co. v. Texas, Supra.
Northern Securities case, 193 U. S. 197.
Swift v. United States, 196 U. S. 375.
United States v. E. C. Knight, 156 U. S. 1.
Pocahontas Coke Co. v. Powhatan Coal Co. 60 W. Va. 508.
936 Richardson v. Buhl, 77 Mich. 658.
Harding v. American Glucose Co. 182 Ill. 615.
Wood v. Greenwood Hardware Co. 75 S. C. 383.
Lough v. Outenbridge, 143 N. Y. 271.
Harriman v. Menzies, 115 Cal. 16.

The chief consideration in determining whether a monopoly exists is not that prices are raised and competition is destroyed, but does the power exist in the combine to raise prices or to destroy competition at pleasure?

In discussing such a combination the case of Pocahontas Coke Co. vs. Powhatan Coal Co., supra, the Supreme Court of West Virginia said: "It is not to be tested by what has been done under it, but by what may be done under it; not by its performance but by its power of performance when fully exercised."

What has been said in the foregoing cases so clearly and correctly states the law of this case, that there remains nothing new or additional to be said upon the subject; and by applying the law
937 as there enunciated it seems to us that there is no logical escape from the conclusion that the respondents are guilty as charged in the information, and have usurped powers not granted by their charters or authorized by their licenses.

But somewhere in some one of the numerous briefs filed herein, it has been intimated that if there exists between respondents an unlawful pool, trust, or conspiracy in restraint of trade, it was formed in some other state, and for that reason neither the parties to it nor the conspiracy so formed are amenable to the laws of this State. In reply to that suggestion it might be said our anti-trust laws denounce as illegal all contracts, agreements and conspiracies entered into between two or more persons which have for their object limitations upon the commerce of the State, and for the purpose of fixing and maintaining the prices of commodities bought and sold therein. Those laws embrace within their provisions all persons whether natural or artificial, and whether residents of this state or residents of other states or foreign countries. Such contracts when entered into, whether by express agreement or by implied understanding of the parties, become affirmative and vital elements of the business of each and every person who is a party to the contract or conspiracy, and all business conducted in pursuance thereof draws to it those illegal elements wherever transacted; and if such business is carried on in

this state, then that business is illegal and is not protected by the laws of the state, but is, upon the other hand, as before stated, prohibited by law and declared to be unlawful. Not only that but all persons or corporations who conduct such business in this state, in pursuance to such contract or conspiracy, wherever entered into, violate the laws of this state and are amenable thereto. It goes without saying that if the contract or conspiracy is entered into and formed in another state, or foreign country, then the parties thereto could not be punished under the laws of this state for entering into and forming the conspiracy, any more than a man could be punished here for stealing a horse in another state; but if he should bring the stolen horse into this state, then he could be punished for the
938 latter act under the laws of this state, for the obvious reason that the illegal act committed in the foreign state would follow the man and horse into this state, which would enter into and form an illegal element in his possession of the horse, and thereby subject him to the penalties of our laws. The same is true with reference to commodities sold in violation of our anti-trust laws. It is wholly immaterial where the unlawful conspiracy was entered into, or the means by which it was formed, if, as a matter of fact, the commodities are sold in this state in pursuance to such conspiracy—then the vendors are violators of our law and are punishable as such.

In the case at bar, the New Jersey, the Waters-Pierce, the Indiana and the Republic companies were all parties to the conspiracy charged in the information, and whether formed in this state or not is wholly immaterial, for clearly all of them, except the New Jersey Company, sold the products of petroleum in this state in pursuance to that conspiracy, and in violation of our anti-trust laws, and are thereby rendered amenable to the penalties thereof.

In the consideration of the foregoing legal propositions, and in arriving at the conclusions stated, we have not lost sight of the vast financial interest involved, nor the magnitude of the business institutions to be affected thereby. Nor are we unmindful of the fact that an assault made upon those vast interests is also a serious wound inflicted upon the material welfare of the state itself, by banishing so much capital therefrom and otherwise disturbing the financial and business interests of the country; but, if, upon the other hand, such abuses as those complained of are permitted to continue untrammeled, then it would be only a question of time until they would sap the strength and patriotism from the very foundations of our government, overturn the republic, destroy our free institutions, and substitute in lieu thereof some other form of government.

The Congress of the United States, the legislatures of the various states, and the courts throughout the country have seen the growing, far-reaching and disastrous evils and consequences incident to such pools, trusts and combinations, and have not hesitated to destroy them, root and branch, when made in restraint of trade, or for the purpose of fixing and maintaining prices. But it is,
939 however, truly regrettable that such useful and beneficial institutions, when properly directed, should be guilty of such grievous misconduct and usurpation of power as to require the en-

forcement of the drastic legislation found upon our statutes regarding such matters; but, if not restrained in their unwise cupidity, they will inevitably pull down the temple upon their own heads, as well as upon all others who worship therein, and thereby add another incident to those where history has repeated itself.

We greatly regret that it becomes our duty to adjudge the
940 charter of the Waters-Pierce Oil Company and the licenses of the other two respondents to do business in the state, forfeited, and to enjoin all of them from further transacting business intra-state therein; but by doing so we are following the plain mandates of the law.

This court said in the case of State ex inf. vs. Armour Packing Co. supra, l. c. 387:

"'Competition is the life of trade.' Pools, trusts and conspiracies to fix or maintain the prices of the necessaries of life, strike at the foundation of government; instill a destructive poison into the life of the body politic; *whether* the energies of competitors, blight individual investments in legitimate business; drive small and honest dealers out of business for themselves, and make them mere 'hewers of wood and drawers of water' for the trust; raise the cost of living and lower the price of wages; take from the average American freeman the ability to supply his family with necessary, adequate and wholesome food; force the boys away from school and into the various branches of trade and labor, and the girls into workshops and other avenues of business, and make them breadwinners while they are yet almost infants, because the head of the house cannot earn enough to feed and clothe his family.

"The people are helpless to protect themselves. The powers that be must protect them, or as surely as history records the story of republican government in Rome, so surely will the foundation of our government be shaken and its perpetuity threatened. Missouri (State ex inf. Atty. General vs. Insurance Co., 152 Mo. 1); New York (People vs. Shelden, 139 N. Y. 251); Pennsylvania (Coal Co. vs. Coal Co., 68 Pa. St. 173); Ohio (Salt Co. vs. Guthrie, 35 Ohio St. 666); Kentucky (Anderson vs. Jett, 89 Ky. 375); Iowa (Chapin vs. Brown, 83 Iowa 156); Illinois Craft vs. McConoughy 79 Ill. 346, and Moore vs. Bennett, 140 Ill. 69); Wisconsin (Builders Assn. vs. Niezerowski, 95 Wis. 129); California (Vulcan Powder Co. vs. Powder Co., 96 Cal. 510); Texas (Texas Standard Oil Company vs. Adoue, 83 Tex. 650); Louisiana (India Bagging
941 Co. vs. Kock, 14 La. Ann. 168), and the Supreme Court of the United States (U. S. vs. Trans-Missouri Freight Association, 171 U. S. l. c. 558) have held statutes which prohibited such combinations or trusts to be constitutional, and further, that all such combinations or agreements are against public policy and void at common law, irrespective of whether there is any statute on the subject or not."

Continuing the court said, l. c. 392:

"The wisdom and experience of all ages and all people have demonstrated the necessity for such laws, and for the rigid enforcement of them. And even after so many years of unfailing enforce-

ment of such laws the terrors and consequences thereof have not been sufficient to deter the people from violating them."

This record is a fulfillment of the prophetic remarks above quoted, because it abounds in instances where this unlawful combination has, by the means hereinbefore stated, withered the energies of competitors, blighted individual investments in legitimate business; driven small and honest dealers out of business for themselves, and have made them "hewers of wood and drawers of water" for the trust; and have reduced the price of petroleum and at the same time have raised the cost of the various products thereof to the great detriment of the producers of the raw material, and to the consumer of the manufactured products thereof.

We have devoted much time to the consideration of this case, and have carefully gone through the unprecedented record and briefs on file herein, which cover almost four thousand printed pages, and we have carefully considered all the objections made to the admission and rejection of evidence; the giving and refusing instructions; as well as the exceptions made to the report of the master. Those which were specially urged upon our attention we have discussed at much length in this opinion; while those not discussed are incidental or subordinate to those which we have discussed but could not
942 change the conclusions reached by the Master and by the court. We therefore, deem it unnecessary to still further prolong this opinion by expressing our views upon those matters in this opinion.

We are, therefore, of the opinion that the respondents are guilty of the charges of usurpation complained of in this, that they have created, entered into and become members of a pool, trust, agreement, confederation, combination, arrangement and understanding among themselves for the following purposes:

"First. To regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri for the refined products of petroleum, sold and offered for sale in this State.

"Second. To control and limit the trade in the refined products of petroleum in this State.

"Third. To control, limit and prevent competition in the business of buying and selling the refined products of petroleum in this State between themselves and others engaged in like business.

"Fourth. To deceive and mislead the public into the belief that they were separate and distinct corporations, and pursuing an independent business as legitimate competitors in the purchase and sale of the products of petroleum."

We are also of the opinion that respondents, by means of said pool, trust, combination, etc., between the dates stated in the information, have:

First. Fixed, controlled and maintained prices at which they sold the refined products of petroleum to the retail dealers in this State.

Second. That they controlled and limited the trade of refined products of petroleum in this State.

Third. That they controlled, limited and prevented competition in the business of buying and selling the refined products of petro-

leum in this state between themselves and others engaged in that business.

943 Fourth. That they did deceive and mislead the public into the belief that they were separate and distinct corporations, pursuing an independent business as legitimate competitors in the purchase and sale of the products of petroleum.

The charter of the Waters-Pierce Oil Company does not authorize or empower it to do any of the things before enumerated.

And we are, therefore, of the opinion that a judgment of forfeiture should be entered dissolving the Waters-Pierce Oil Company, and that an additional fine of fifty thousand dollars should be imposed against it as a punishment for its violation of the laws of this State, as before stated, which sum is to be paid into the State Treasury for the use and benefit of the State of Missouri, within sixty days from the rendition of this judgment.

But being satisfied from the evidence disclosed by this record that the minority stockholders in said company objected to entering and becoming a member of the so-called "Oil Trust," and did everything within their power to prevent the same, and exerted every influence within their command to act independent of it, but to no avail. And the evidence also discloses that the majority interests in the company, which are owned by the New Jersey Company, displaced the president of the company, who was a minority stockholder, because of his persistent efforts to conduct the affairs of the company independent of the New Jersey and Indiana companies. These facts being true, the punishment to be inflicted upon that company should not be so severe as that imposed upon the other two respondents, and thereby recognize the good faith of the minority stockholders, and at the same time impose a punishment upon the company which is commensurate with the offense committed against the State.

We are, therefore, of the opinion that the fine of fifty thousand dollars should be paid into the Treasury of the State on or before March 1st, 1909, and that a stay of execution should be ordered as to the decree of forfeiture of the charter until further

944 ordered by the court.

And it is so ordered.

We are also of the opinion that the licenses heretofore granted by the State to the Standard Oil Company of Indiana and to the Republic Oil Company of New York do not authorize or empower either of them to do any of the things before stated; and that by reason of the usurpation of those powers and privileges said companies have violated the laws of this State, and have thereby forfeited their licenses and authority to conduct and carry on intra-state business in the State of Missouri. And we are also of the opinion that each of said companies should be fined in the sum of fifty thousand dollars for the use and benefit of the State of Missouri; to be paid into the State Treasury within sixty days from this date. All of which is so ordered.

The following are the judgments and decrees in full rendered

against each of the three respondents which were drawn by Gantt, C. J.

All concur: Except Lamm, J. who dissents as to certain portions — the decree as stated in separate opinion, Graves, J. concurs in separate opinion.

A. M. WOODSON, *Judge.*

945 STATE OF MISSOURI ex Information HERBERT S. HADLEY, Attorney General, Informant,

vs.

"STANDARD OIL COMPANY" OF INDIANA, "REPUBLIC OIL COMPANY" of New York, and "Waters-Pierce Oil Company" of Missouri, Respondents.

And now on this day, this court having fully considered the evidence in this cause, and announced and filed its opinion that the said respondents and each of them are guilty as charged in the information of the Attorney General of a violation of the statute of this state, entitled, "Pools, Trusts and conspiracies; Unlawful combinations, approved March 24th, 1877, and an Act of the General Assembly of this state, approved April 2nd, 1891, entitled, "An Act providing for the punishment of pools, trusts and conspiracies to control prices and as to evidence and prosecution in such cases," and now known as Chapter 143 of the Revised Statutes of Missouri, 1899, come now the State of Missouri, by Herbert S. Hadley, the Attorney General and the said respondents by their respective counsel, and it is now here considered, ordered and adjudged by the Court that the said respondents and each of them are guilty of violating the said Acts of the General Assembly of this State, in that at the dates and times set forth in the information of the Attorney General, they did form and enter into a pool, trust combination and conspiracy, to regulate fix and control the prices to be paid by retail dealers and others in the State of Missouri, for naphtha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum and to control and limit the trade in the articles aforesaid and to prevent competition in said business of buying and selling naphtha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum, in this state, between themselves and others engaged in like business and to deceive and mislead the public, and did control, fix and maintain the prices for said articles and have prevented and de-
946 stroyed competition in the purchase and sale of said products of petroleum in this state as charged in the information, and thereupon, it is now considered, ordered and adjudged by the court that by reason of the violation of said statutes of this State, in forming and entering into and maintaining said unlawful combination, conspiracy and pool, the said Standard Oil Company, organized under the laws of the state of Indiana, and heretofore licensed to do business in this state, and the said Republic Oil Company, organized under the laws of the State of New York, and licensed to do business in this State, have each and both forfeited their respective licenses

heretofore granted them by the Secretary of State of Missouri, and it — further considered, ordered and adjudged that said license of the said Standard Oil Company of Indiana, and the said license of the said Republic Oil Company of New York, be and the same are hereby forever forfeited, annulled and cancelled and the said Standard Oil Company of Indiana and the said Republic Oil Company of New York, are hereby ousted of any and all rights and franchises granted to them, under the laws of this state, to further do business in this State, and it is further considered and ordered and adjudged that the said "Standard Oil Company" of Indiana and the said "Republic Oil Company" of New York, each for the violation aforesaid of the laws of this state, in forming entering into and maintaining the conspiracy and combination to regulate, control and fix the prices of said products of petroleum in this state and to control and limit the trade in said products in this state and to prevent competition in said business, be fined fifty thousand dollars, and that each of said respondents, the said Standard Oil Company of Indiana, and the said Republic Oil Company of New York, pay each the said sum of fifty thousand dollars to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of the State, and upon default and failure so to do, that the State of Missouri have execution therefor, to be levied and enforced ac-
947 cording to the laws of this state, in such cases made and provided, and it is further considered, ordered and adjudged by the court, that the said respondent, the said "Waters-Pierce Oil Company, by its violation of the said laws and statutes of this state, against "Pools, trusts and conspiracies" and known as Chapter 143 of the Revised Statutes of Missouri 1899, has forfeited its charter to do business in this state and it is therefore considered, ordered and adjudged by the court that the right and franchise heretofore granted to said Waters-Pierce Oil Company, to be a body corporate and to do business and contract as such, with all other rights acquired by its certificate of incorporation, be and the same are hereby forever forfeited, annulled and set aside and said Waters-Pierce Oil Company, is hereby ousted of its corporate rights and powers and franchises heretofore granted to and enjoyed by it under the laws of this state, subject however to the further provisions of this judgment, and for the violation of its said franchises, by forming, entering into and maintaining the said pool, combination and conspiracy, to regulate, control and fix the prices of the products of petroleum, as hereinbefore specifically found and set forth and to prevent competition in the business of buying and selling said products in this state, it is considered, ordered and adjudged by the court that in addition to said ouster, said Waters-Pierce Oil Company be fined fifty thousand dollars, and that it pay said fine of fifty thousand dollars, to the clerk of this co[illegible] on or before the first day of March, 1909, to be by said clerk pa[illegible] into the treasury of this State, and upon default and failure to pay said fine on or before said date, the State of Missouri have execution therefore to be levied by the Marshal of this court and enforced according to the laws of this state in such cases

made and provided. But it is further considered, ordered and adjudged by this court, that if the said Waters-Pierce Oil Com-
948 pany, shall pay said fine to the clerk of this court on or before the first day of March 1909, and shall immediately cease all connection with the said other respondents herein in continuing or maintaining said pool, trust and conspiracy to fix, control and regulate the prices of naptha, benzine, gasoline, kerosene, lubricating oil and all other products of petroleum, and shall refrain from all pools, trusts and combinations to control the prices of said products of petroleum and all combines and conspiracies to prevent competition in the trade of buying and selling said products and shall furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connection with its said co-respondents herein and all other parties or companies whatsoever and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this state and its charter then the judgment of ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by order of this court and the said Waters-Pierce Oil Company is hereby given until the fifteenth day of January 1909 to file the proofs of its willingness to comply with the judgment of this court and until that date in no event, will the writ of ouster be awarded. And it is further considered, ordered and adjudged by the court that if it shall be shown to the satisfaction of this court hereafter, that notwithstanding the promises and assurances of the said Waters-Pierce Oil Company to abide by this judgment, it has violated the conditions of this judgment and has violated the said statute against "Pools, Trusts and conspiracies," then and in such case, the suspension of the writ of ouster shall be removed by this court and absolute ouster be enforced as directed and adjudged herein. It is further ordered and adjudged that the State of Missouri at the relation of the Attorney General have and recover its costs herein paid and expanded, including the allowance of
949 the special commissioner and the stenographer in taking and certifying the testimony herein and the fees of the witnesses and have execution therefor, against all of said respondents.

950 In the Supreme Court of Missouri, Court in Banc, October Term, 1908.

(No. 12988.)

STATE OF MISSOURI ex Inf. HERBERT S. HADLEY, Attorney-General, Informant,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Separate Concurring Opinion.

To my view, there is more than one side to this case. From a legal standpoint, it may be admitted, and I do so admit, that the

evidence shows a conspiracy and combination to violate the anti-trust laws of Missouri. For the sake of the argument, it may be and should be conceded that the Waters-Pierce Oil Company, as a corporation, was a party thereto. We emphasize the words, "as a corporation," because the evidence discloses a protest against the very things for which this action was brought by the owner of a very large part of the minority stock. From the evidence it appears that Mr. Pierce owns a large part of the stock of the Company, after you have taken therefrom the majority part thereof, which is owned and held by the Standard Oil Company of New Jersey. This latter Company, and in my judgment, the real offending party, is not before the Court in this proceeding. The learned Attorney General no doubt has good and sufficient reasons for not including it and that I may not be misunderstood, will suggest that there is no evidence, that it, as a corporation, was doing any business in this State. It is not a domestic corporation, and as a foreign corporation has never taken out license to do business in Missouri. This fact precludes the Attorney General from making it a party to this action, and in this as a question of law his judgment accords with well recognized legal principles. From the evidence before us so strong was the opposition of the minority stock ownership in the Waters-Pierce Company against the violations of law charged in this information, that Mr. Pierce through the majority of the stock ownership was deposed from the management of the Company which he organized, and which bears his name, for the period of a
951 year or more. As to the other two respondents, the Standard Oil Company of New Jersey owns practically all their stock. The fact is that except through stock ownership in subsidiary corporations, the real offender is not before this Court at all. That real offender is the Standard Oil Company of New Jersey, the parent of the oil trust, if there be such a trust and we think there is. We cannot punish that Company directly, because it is not before us. Its charter we cannot take, because not granted by Missouri. Its license to do business we cannot take, because it, as a corporation, is not doing business in Missouri and has no license. The Standard Oil Company of Indiana we can reach because of its license to do business in Missouri. Likewise, we can reach the Republic Oil Company. Both are foreign corporations, and the most we can do is to revoke their license to do business in this State, and if in the judgment of the Court, thought proper, add a fine or penalty. Their charter or corporate life is not in our hands. We can say to them, we will take your license to do business in Missouri, but they are left to roam at large outside of Missouri. For their offenses against our laws, we can say to them that we will take their license and in addition thereto affix a fine. This is as far as we can go. Their *existence* as a corporation we cannot reach. Their corporate life we cannot take. Contracts which they have made and business which they have outside of Missouri, they can proceed to transact. Now, to the point we have in mind.

The Waters-Pierce Company is a Missouri corporation. It is true that as a matter of law, we can take its corporate franchise for

the violation of our laws. We can go even further and add a fine as penalty. We can do one or both, and herein I dissent from the opinion of my learned brother Woodson. In his opinion he simply cancels the licenses of the Standard Oil Company of Indiana and the Republic Oil Company to do business in Missouri. He suggests no fine. The only punishment such companies receive is a prohibition to do business in this State. I think that they should not only have their licenses taken from them, but that there should be a
952 substantial fine imposed against them.

As to the Waters-Pierce Company, I am of opinion that it should not be punished more than the other respondents. The opinion of my learned brother forfeits the corporate life of the Company. We can't go thus far as to the other two respondents, because we have no such power. To take the corporate franchise of the Waters-Pierce Company, and thus prohibit it from doing business elsewhere, it would be a punishment absolutely excessive as compared with what we can inflict upon the other respondents, and this too in the face of the evidence that a large minority stock holding had been battling against the violation of law. We should have some consideration for minority stockholders. They should not have their property rights slaughtered absolutely, because a majority interest in the corporation could control them. If it were not so patent, that Mr. Pierce, the minority stock holder, had even lost his place with his own Company, because of his opposition to the methods of the Standard Oil Company of New Jersey, there might be some excuse for inflicting by way of judgment a punishment, which would be commensurate with the combined act of the stock holding interests in the corporation. We do not wish to be understood that the act of the corporation, whatever difference there may be between the minority and majority stock ownership, should not be adjudged and punished but what we do desire to urge is that in cases of this kind the judgment of the Court is within the discretion of the Court. We have always so held from the earliest time and up to and including the Delmar Jockey Club case, 200 Mo. 34. With this discretion and with the evidence in the record before us, to my mind the judgment indicated by my brother Woodson's opinion should be modified in two ways. The opinion calls for but one judgment as to all respondents, that of ouster. Ouster as to the Standard Oil Company of Indiana and the Republic Oil Company is but slight punishment for they can continue in business elsewhere. In my way of thinking, these Companies should not only be
953 ousted of their license right to do business in this State, but that a substantial fine should be added. I also think that as to the Waters-Pierce Company, the judgment of ouster should not go. As to it, a judgment of guilt should be entered, and a reasonable fine fixed. Even this would be harsh upon the minority stock-ownership in the corporation, but as the corporation has violated the law, in our discretion we should fix a reasonable punishment. That of ouster, called for by the opinion of my brother, is more than a reasonable punishment. We have full precedents in this court in the Insurance Trust case, as in others decided by this court.

I therefore concur in the opinion of my brother as to a general judgment of guilty, but think the punishment as to two of the respondents, as indicated by the opinion is insufficient, and that of the other, the Waters-Pierce Company is excessive.

And when I suggest that the punishment of the two is not sufficient, I do not mean to say that Courts should become crazed upon any subject or against any interest, but should be governed by that calm judicial judgment that has always characterized the decrees of unbiased judicial tribunals. Popular crazes have no place in the judicial opinion. With these views firmly fixed, I feel that I should insist upon a modification of the judgment indicated by the opinion to the extent herein stated. Otherwise, I concur.

954 The foregoing was prepared before consultation on the case and before the original opinion was modified to its present form, but I file it herewith as expressive of my reasons on this case and because in one particular, my views differ from those of the majority.

W. W. GRAVES, *J.*

955 LAMM, *J.*, concurs in part and dissents in part. He is of the opinion that all of the defendants are guilty as charged. Further, that the license of the Republic Oil Company to do business in Missouri is properly forfeited absolutely, and once for all. The business life of the Company in this jurisdiction would seem to show that it was born in original corporate sin and begotten in corporate iniquity. The record shows that it is a rover, flying a flag of fair trade only as a decoy—wearing the livery of a fair trader to the more easily and effectually strike down all fair trade in oils and the more effectually fasten the yoke of an odious monopoly upon the State. It is here today and gone tomorrow. It has no fixed business abode in Missouri and is not rooted in this State by any vested interest. Therefore, he concurs in what is said about it and in the punishment adjudged against it. Nothing in its career in this State is to be so commended as its exit by the action of the law.

As to the Standard Oil Company of Indiana, the case is somewhat different. That corporation has vested interests in the State in a plant of great value and a great business in the useful line of refining oils. To the extent that it is pursuing the refining of oils, it is subserving a legitimate business purpose useful to our people. In so far as it voluntarily entered into a conspiracy to suppress competition and fix arbitrarily the price of oils in the teeth of our anti-trust statutes and the common law and to establish a trade monopoly contrary to both, it deserves punishment. But in accordance with the usage of this Court in the Beef Trust case, the Trust Company case and the Insurance Companies case, we should temper justice with mercy by using a flexible power in our judgment. In the Beef Trust case and in the Insurance Companies case we went to our anti-trust statutes, to our quo warranto statutes and to the common law to get at our powers in punishment. We should do so in this case so long as we have ruled we have the right. Therefore the ouster against the Standard Oil Company of Indiana bottomed upon a for-

iture of its license to do business in Missouri should conditionally protect its general business in refining oils—this primarily, 56 to protect our own citizens against the dismantling of a useful business plant. He is of the opinion further that the judgnent of ouster should be suspended during good behavior, on its aking a sufficient showing of compliance with the law. This metes t to it the same degree and character of punishment administered the Waters-Pierce Company. We have provided a *locus pæniitia* for that Company, why not for this one?

As to the Waters-Pierce Company, he does not concur in the stress id in the principal opinion on the sometime wishes and desires of ne minority stockholders not to enter into the unlawful combination restraint of trade found to exist. If the Court in administering unishment may look within the body corporate and see the indiidual stockholders and comment on their tentative positions, in the nception of corporate enterprises, and mete out justice, not as it ay affect the body corporate, which is a party to the litigation, t the individual shareholders who are not parties, then at least should not be lost sight of that the same record that shows the inority stockholders of the Waters-Pierce Company at first prosted, also shows that they finally consented. Did these minority ockholders invoke judicial aid in any court open to them to prent a consummation of the unlawful purpose of the alleged wicked ajority? Not at all. Did they ever give open cry to their protest nd call to their aid the force of wholesome public opinion? No. id they refuse to take an even pro rata of the illicit, fabulous gains rising from the unlawful combination? No. Have they got those ains in pocket now? Yes. Do they offer restitution? No. When ne corporation was sued in this proceeding did those minority stockolders enter their appearance or ask to have an appearance entered r them in order to protect their minority holdings by placing emselves *rectus in curia?* No. In such condition of things, he is f opinion that the minority stockholders are not objects of especial dicial sympathy, no more than was Empress Maria Theresa in a rtain historical event. "What," asked one of Frederick the Great, "was the attitude of the Empress toward the partition of 57 Poland?" "She weeps," dryly remarked Frederick, "but she takes her share." Until such time as it be written as a prept of law that the allowable way to defeat temptation is to give way it, or until it be written in the law that the alluring enticement great gains *forces* the tempted one into doing an illegal act and kes the edge from a willing participation in an illegal act, he is ot willing to extend such judicial sympathy. To suspend the judgnent of ouster on payment of a fine, conditionally, upon a showing f corporate fidelity to law is well enough, but in his opinion the unishment is too light for such conspicuous, profitable, defiant and ng drawn out violation of our anti-trust statutes. Justice should ot be spectacular or capricious, but as this defendant made millions f illegal profits, its fine should be measured by its own standard, in rder to be felt and appreciated.

He is therefore of the opinion that the amount of its fine should

be fixed at one million of dollars. He is of the further opinion that the fine of the Standard Oil Company of Indiana should be increased and the ouster changed from an absolute one to a conditional one.

HENRY LAMM, *J.*

958 And afterwards, to-wit, on the 2nd day of January, 1909, the further following proceedings were had in said cause, viz:

STATE ex rel. HADLEY, Inf.,
v.
STANDARD OIL CO. et al., Resp.

Come now said respondents, Standard Oil Company, and Republic Oil Company, by attorneys, and file their motions for a rehearing herein.

Which said motions are in the words and figures as follows, to-wit:

959 In the Supreme Court of Missouri, Court en Banc, October Term, 1908.

No. 12988.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY and REPUBLIC OIL COMPANY, Corporations, Respondents.

Motion for Rehearing upon Behalf of the Respondent Standard Oil Company of Indiana.

Now comes the respondent, the Standard Oil Company of Indiana, and respectfully moves the court to grant it a rehearing for each of the following reasons:

960 1. The opinion was filed upon December 23, 1908, and adopted, to be entered in the cause, a form of judgment prepared by the Chief Justice, providing a general ouster effective as against this respondent, when the judgment became final, but as to the Waters-Pierce Company it was not in any event to become effective before January 15, 1909. Upon December 24, 1908, the clerk gave this notice to respondents:

"On page 395*a* of the opinion in the Standard Oil case, the court has directed the clerk to correct the last paragraph by striking out the words within sixty days from the date of the rendition of this judgment and inserting therein 'on or before March 1st, 1909,' so that said paragraph shall read when corrected as follows: We are therefore of the opinion that the fine of fifty thousand dollars should be paid into the Treasury of the State on or before March 1, 1909, and that a stay of execution should be ordered as to the decree of forfeiture of the charter until further ordered by the court."

The form of judgment was not, however, modified. It is probable that it was intended that the modification should apply to all respondents. It is however not plainly so stated. It is manifest that the purpose of the court in making the modification was to give a reasonable time after the judgment became final within which the ousted companies might make the necessary adjustments of their business to meet the changed condition of affairs. The reason applies with especial force to this respondent. The character and extent of its business was described by President Moffett (Rec. 2400-2470; Abs. 778-814; Report, 184-190) and General Manager Crenshaw (Rec. 2612-2649; Abs. 879-894; Report, 207-209). The Commis-
961 sioner's report set forth in the opinion (p. 192) briefly states the extent of this business in Missouri; it is forcibly described in the opinion of Judge Lamm; according — the majority opinion, over $1,250,000, has been invested in the refinery (p. 192) which "is very large (p. 208) producing from 1,000 to 1,200 barrels per day" (p. 192) while "the company sells some eight and a half million gallons of oil a year at its tank stations in Missouri" (p. 207). At the Sugar Creek refinery alone there are 187 employés, at Kansas City 32, at St. Joseph 60, and at the tank line stations out in the state, 74. The right to do an interstate business is expressly conceded by the opinion (pp. 318-318½). Many outstanding executory contracts exist requiring the company to receive and deliver property. Employés are entitled to reasonable notice to quit and opportunity to obtain other employment. The refinery cannot be moved. The alleged combination, so far as concerns the refining of oil is expressly held to have been legal (Opinion, p. 355, 356). The vice is held to be (id.) in respondent's dealings as a ret-iler. It is in the interest of the state that some reasonable, proper and legal use or disposition be made of the property of respondent, especially of the refinery. Severe penalties may be individually incurred by the employés in remaining in the service one moment after the ouster becomes effective. There should therefore, in justice be accorded to respondent a reasonable time after the judgment becomes final, within which to adjust its affairs. As the fine is not payable until March 1, 1909, the ouster should not in any event be made effective before that date.

962 2. In view of the nature, extent and character of the business, no good can result in an absolute ouster. The statutes (Laws 1907, pp. 379, 380, sections 8969 and 8975) provide:

"SEC. 8969. Any person violating any of the provisions of this act, or who shall do any act prohibited or declared unlawful by the provisions of this act, shall be adjudged guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

SEC. 8975. That whenever the corporate rights and privileges of any corporation organized under the laws of this state shall have been declared forfeited by a judgment of a court of competent jurisdiction

for any violation of the provisions of this act, and whenever the rights and privileges of any corporation organized under the laws of any other state or country to do business in this state, have been declared forfeited by a judgment of a court of competent jurisdiction for the violation of any of the provisions of this act, it shall thereafter be unlawful for any person, corporation, or association of persons to deal in or offer for sale in this state any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or article or thing whatsoever, or contract of insurance against loss or damage by fire, lightning or storm, made, produced, manufactured, or dealt in by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successors or assigns of any corporations whose rights, franchises or privileges have been so declared to be forfeited."

There is thus embodied in the new statute that which before appeared in section 8972 (Rev. Sts. 1899) in this language:

963 "That whenever the corporate rights and franchises of any corporation organized under the laws of this state have been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this article and whenever the right and privilege of any corporation organized under the laws of any other state or country to do business in this state has been declared forfeited by the judgment of a court of competent jurisdiction for any violations of the provisions of this article, it shall thereafter be unlawful for any person, association of persons, or corporation, to deal in, sell or offer for sale in this state any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successor or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than $100 nor more than $1,000, or by both such fine and jail imprisonment."

A violation of section 8975 is made a felony. Hence, any person who buys from respondent, or from any person who may acquire the refinery or any of the tank stations, is imperiled by a possible prosecution for a felony. There is no necessity for any such harsh treatment. Respondent should be given an opportunity to adopt a plan by which it can remain in the state, and if necessary, be, under the direct supervision and direction of this court, permitted to carry on its business. In other words, the writ of ouster could be suspended,

so long as the business shall in the future be legally and
964 properly conducted according to conditions, rules and regulations hereafter prescribed by this court. At least, before putting the company out of the state, time should be given to adopt a

plan that will insure legal and proper conduct of the business in the future.

3. The court decides (Opinion, pp. 318 318½) that the right to do an interstate business cannot be interfered with. The judgment not only revokes the license, but also recites that respondents are "hereby ousted of any and all rights granted to them under the laws of this state to further do business in this state." The constitution of the United States is part of the law of this state, and under it as herein decided, there is a right to do an interstate business. In view of the harsh penalties provided by law, no doubt should exist upon this subject, and there should, in any event, be written into the judgment the proviso that the respondent was not prevented from doing in Missouri an interstate business.

4. The court held that this was a civil proceeding and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding which was beyond the court's power and jurisdiction. The court thereby takes from respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the 14th Amendment to the Constitution of the United States.

965 5. The judgment of ouster is also an exercise of power by way of original jurisdiction in a criminal cause, in view of the forfeiture and penalties imposed by section 8972 (Revised Statutes 1899) and sections 8969 and 8975 of the Laws of 1907. These sections and the judgment ordered impair the obligation of a contract, take property without due process of law, abridge the privileges of respondent and fail to accord to it the equal protection of the law, all contrary to the 14th Amendment to the Constitution of the United States and section 10 of article 1 of the said Constitution.

6. By the answer and by the exceptions to the report of the commissioner, the respondent claimed that each of sections 8965, 8966, 8971, 8972, 8983, 8984 and 8985 was contrary to section 10 article 1 and to the 14th Amendment to the Constitution of the United States. The state successfully contended that as against a statute of exclusion a foreign corporation could not raise the objection, and the court then proceeded not only to oust, but also to fine respndent. Hence, even if these sections could be upon such ground treated as valid exclusion statutes, they could not be so regarded as against a judgment imposing a fine.

7. Questions decisive of the case, duly submitted by counsel have been overlooked by the court:

(*a*) Those shown by divisions I, II, III, IV, IX, X and XI of the brief upon the exceptions to the report of the commissioner.

(*b*) The unconstitutionality of sections 8983, 8984 and 8985 (Rev. Sts., 1889) as decided in Hovey v. Elliott, 167 U. S.,

966 409; McVeigh v. U. S., 11 Wall., 259; Foley v. Foley, 120, Cal., 40, 42; 52 Pac. Rep. 122, 124, 125; Greig v. Ware, 25 Col., 187, 188; 55 Pac. Rep., 163, 165. These cases decide that

no statute is valid which authorizes the striking out an answer because of a refusal to obey a court order. The opinion (p. 317) erroneously states there is no such decision.

8. The decision is in conflict with express statutes i. e., sections 8972, Revised Statutes, 1899, and sections 8971 of the Laws of 1907, pages 380, 381, and with controlling decisions, to which the attention of the court was not called through the neglect or inadvertence of counsel, the decisions being McVeigh v. U. S., 11 Wall., 259; Hoover v. Elliott, 167 U. S., 409. Cotting v. Goddard, 183 U. S., 79; Union Sewer Pipe Co. v. Connelley, 184 U. S., 540.

9. Sections 8983, 8984 and 8985 were by this court upheld as constitutional, whereas respondent claimed and still claims that they violate the 14th Amendment to the constitution of the United States in that they deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and also deprive it of its property without due process of law in that there was a threatened penalty of a judgment against it if it did not comply with the order.

10. Sections 8965, 8966, 8967, 8971, 8972 and 8978 were repealed by the Laws of 1907, and after the institution of this suit new sections enacted in lieu thereof. It is true that the new
967 law provides that the penalties incurred under the old law should not be affected. Inasmuch as the legislature cannot constitutionally grant to this court power to impose any forfeiture or fine, the reservation has, and can have, no application to proceedings pending here. Hence, the statutes here enforced (Sections 8965, 8966, 8967, 8971 and 8978) have been repealed and to now enforce the same against respondent is to take its property without due process of law, bridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, contrary to the provisions of the 14th Amendment to the Constitution of the United States.

11. The law as amended (Laws 1907, p. 377 et seq.) forbids an imposition of both a fine and a judgment of ouster or revocation of a license. The penalty is in the alternative. Such would be the relief as against others. Hence, when this court adjudges both a fine and a forfeiture, it denies to respondent the equal protection of the law and takes its property without due process of law, all contrary to the provisions of the 14th Amendment to the Constitution of the United States.

12. Respondent as a "manufacturer had a perfect right" to buy from, or sell to whom he pleased, but the vice (p. 356) was declared to be in the fact that "the Indiana Company was not only a manufacturer of the products of petroleum, but also a large dealer." Yet the judgment does not limit the ouster to the retail business. It excludes respondent from doing business as a manufacturer in the conduct of which business it is conceded it acted within the law.

968 13. The opinion sets out in full (pp. 29-286) the report of the commissioner and states (p. 29) that it "is conceded to be substantially correct." This is an unfair statement. It was not so conceded. This respondent (Brief upon Exceptions to Report pp.

1-17, 41-50) in every conceivable way attacked it because incorrect, argumentative and misleading and a mere summary. It was incorrect when it set out as the evidence only such detached portions as were favorable to the state. Many instances of mistakes by the commissioner as to the evidence were pointed out (Brief upon Exceptions to Report, pp. 41-50). The report will in and of itself occupy nearly a volume of the reports. Yet it as shown by the authorities (id. pp. 2-15) should be absolutely rejected and a specific and distinct finding of fact made. This point is ignored and not noticed.

14. The opinion (pp. 334-379), takes forty-nine pages to demonstate that the territorial division, common stock ownership and giving of rebates, each considered by itself, is no violation of law, but that the vice consisted in their combination. The commissioner reported (Opinion, p. 201) that this respondent "has done no rebating" since 1901, when Manager Mayer came back. So the commissioner shows that this respondent had a large refinery and was a manufacturer (Opinion, pp. 192, 227). The opinion then states (pp. 355, 356) that as a manufacturer the respondent could legally do the acts complained of. The judgment, however, excludes it from doing all business both manufacturing and retailing.

959 15. The opinion (p. 337) states that "neither the Indiana Company nor Waters-Pierce Company will sell to the independent companies except at retail." There is no foundation for this statement, as shown in the brief upon exceptions to the commissioner's report (pp. 46-47). President Moffett (Rec. 2344, Abs. 788) testified: "We never refused to sell oil to anyone who paid our price." The independent oil dealers refused to buy because as the leader of them, Stocke (Rec. 146-7, Abs. 23), expressed it, "it is strictly against my principles."

16. The commissioner was in error and his report absolutely insufficient, and as heretofore shown (Brief on Exceptions, 1-17) by reason, authority and statute, respondent was entitled to have a concise pointed finding of fact and its requests for specific findings passed upon. This would probably present the legal questions in the case. This right has been accorded neither by the commissioner nor the court.

17. The opinion misstates the facts in several particulars:

(*a*) On page 337 of the opinion the Court says: "Neither the Indiana Company nor the Waters-Pierce Oil Company will sell to the independent companies except at retail prices." There is no foundation whatever for this statement. While it is true that there are statements by the witness, Stocke, and other witnesses that they could not buy from the Standard Oil Company in Waters-Pierce territory and vice versa, still, there is no foundation for the

970 statement by the court that these companies would not sell to independent dealers except at retail prices. The commissioner did not find this to be a fact.

(*b*) On pages 337 and 338 the court says: "Oil for the Indiana Company and all other subsidiary companies of the New Jersey Company is transported in pipe lines and in tank cars belonging to the latter company, while the oil of the Waters-Pierce Company is

transported in tank cars about one-half of which are owned by i
and the other half are owned by the New Jersey Company, whic
aggregates, if we correctly understand, about 130 cars, but neithe
of the said companies will permit any of the independent companie
to transport oil through the pipe lines or in their tank cars."

This statement is a misconception of the facts, for that no illumi
nating oil or gasoline is transported through pipe lines anywhere
it has not been found feasible to transport these products in this way
The only exception to this, the pipe line under the Mississippi rive
at St. Louis owned by the Waters-Pierce Company. Crude oil is th
principal product transported through pipe lines. The Standard Oi
Company of Indiana owns no pipe lines; the only pipe line passin
through the state of Missouri is owned by the Prairie Oil & Ga
Company.

Assuming that the conclusion of the court is correct and wa
ranted by the evidence, still, by what legal right could independen
companies claim to use the private property of either corporation i
handling its commodities? As well say, that the corporations ha
the right to use the station tanks of the independent com
971 panies or for that matter, their tank wagons in handling thei
merchandise.

(*c*) On page 356 the court says, referring to the contract divi
ing the state into north and south territories, that: "But, when w
consider the fact that both of these companies are dealers in oil an
that they have divided the state into two parts with an agreemen
by which they bind themselves not to sell to the trade in each other
territory, coupled with the further fact that the Indiana Compan
bound itself to sell as a refiner to the Waters-Pierce Company ex
clusively in that territory, with the corresponding agreement on th
part of the Waters-Pierce Company to purchase exclusively from th
former, presents quite a different question from that supposed b
counsel for respondents and from those considered by the court i
the cases before considered, and especially is this true when we con
sider the further fact that neither of said companies would sell t
any other dealer except at retail prices."

There is nothing in the record which will warrant this conclusio
of the court as to any agreement between the companies that neithe
of the companies would sell to any other dealer except at retail price
Again, there is absolutely no evidence to show that the Indiana Com
pany bound itself to sell as a refiner to the Waters-Pierce Compan
or that the latter bound itself to buy from the Indiana Company ex
clusively, oil in the territory occupied by either. The fact is, tha
this company did not sell or agree to sell exclusively to the othe
nor did the other agree to buy exclusively from it in this territor
and there is no evidence in the record to support any such assump
tion.

(*d*) On page 384 the court says: "And this record con
972 clusively shows that the respondents absolutely fix and main
tain prices at which refined oils sell in this state, and tha
they and their allies control and fix the prices at which all crude oi
are sold." This statement is somewhat remarkable in view of th

fact that the evidence discloses that there are and were during the times complained of, a large number of independent dealers in the State of Missouri, among them the National Refining Company, Jones & Company, and others, and is not borne out by the evidence. Again, on page 384 the Court says: "The record discloses the fact that within the last decade the production of crude oil has about doubled, caused by the discovery and development of new oil fields in Kansas, Texas, Oklahoma and Indian Territory, yet, notwithstanding that fact, the price of refined oils has been upward during that period, and the price of crude oil has fallen more than 50 per cent." This is not true nor do we find any evidence in the record which will support it. The point is given conspicuous credence by the court with no direct testimony in the record upon which to base it.

Wherefore respondent asks that a rehearing be granted, and even if the court adheres to its opinion, that the opinion and judgment be modified as to the matters and things hereinbefore set forth.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Respondent Standard Oil Company of Indiana.

973 In the Supreme Court of Missouri, Court en Banc, October Term, 1908.

No. 12988.

STATE OF MISSOURI, on the Information of HERBERT S. HADLEY, Attorney General,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Motion for Rehearing upon Behalf of the Respondent Republic Oil Company.

Now comes the Republic Oil Company and respectfully moves the court to grant it a rehearing for each of the following reasons:

974 1. The respondent withdrew from the state by presenting upon July 11, 1907, for filing, to the secretary of state, the affidavit required by law (Rev. Stats. 1899, Sec. 1018). The refusal of the secretary to file it was unavailing, because the statute only required the respondent to file it. This was decided in Holman v. Chevailler, 14 Tex., 339. Neither this case nor this statute was noticed by the court.

2. This court, as the opinion concedes, can only exercise original jurisdiction in quo warranto. It has no power to enforce criminal laws. If, therefore, the office has expired, there is nothing upon which the judgment of ouster can operate. The state, by respondent's withdrawal from the state, is deprived of nothing in the way of rights in this court unless in this proceeding there are fines and

penalties to be here enforced. The opinion concedes that these cannot be imposed except as incidents to quo warranto. The foundation for the substance disappeared when respondent retired from the state. The incident therefore could not remain.

3. The court in attempting to both oust and fine this respondent, exercises in part criminal jurisdiction. It thereby exercises as against respondent not as the enforcement of any exclusion statute, but in the way of direct imposition of a fine, a power which it could not exercise as against an individual. This takes respondent's property without due process of law, abridges its privileges as a citizen and refuses to accord to respondent the equal protection of the
975 law, all contrary to the 14th Amendment to the Constitution of the United States.

4. An order was made compelling the production in this state of respondent's officers, books and papers. This was by virtue of sections 8983, 8984 and 8985 of the Revised Statutes of 1899. At a former term, the constitutionality of these sections was upheld upon the theory that respondent, being a foreign company, as against an effort to exclude it from the state, could not assert their unconstitutionality. That reason, however, does not apply to the effort to fine respondent. Even if the first view of the court could be upheld, still as against the fine imposed, these sections are unconstitutional, denying to respondent the equal protection of the law, and taking its property without due process of law, all contrary to the 14th Amendment to the Constitution of the United States.

5. Several questions decisive of the case and duly presented by counsel have been overlooked by the court.

(*a*) Those shown by the brief upon exceptions to the Report of the Commissioner (Divisions I, II, III, IV, IX, X, XI).

(*b*) The unconstitutionality of sections 8983, 8984, 8985, which is decided by Hovey v. Elliott, 167 U. S., 409.

6. The decision is contrary to express statutes and controlling decisions to which the attention of the court was not called
976 through the inadvertence of counsel. Thus, the laws of 1907, provide for either fine or ouster, but forbid both. The laws of 1907 also repeal the sections 8965, 8966, 8967, 8971, 8972 and 8978, the saving clause as to penalties having no application to this court.

7. Each reason set forth in the motion for rehearing filed by the Standard Oil Company of Indiana, is hereby adopted the same as if specifically set forth herein, on behalf of this respondent.

Wherefore, respondent asks that a rehearing be granted and, even if the court adheres to its opinion, that the opinion and judgment be modified as to the matters and things suggested.

ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Respondent Republic Oil Company.

977 And afterwards, to-wit, on the 14th day of January, 1909, the further following proceedings were had in said cause, viz:

STATE ex Rel. H. S. HADLEY, Rel.,
v.
STANDARD OIL CO. et al., Resp.

Comes now the respondent, Waters Pierce Oil Company, by attorneys, and upon its motion, it is ordered by the court that the time heretofore allowed said respondent to file proofs of its compliance with the decree of this court, heretofore made and entered of record, on to-wit: December 23rd, 1908, be and the same is hereby extended to and including February 15th, 1909.

And afterwards, to-wit, on the 15th day of February, 1909, the further following proceedings were had in said cause, viz:

STATE ex Inf. Att'y Gen'l
v.
STANDARD OIL CO. et al., Resp.

Comes now the Waters-Pierce Oil Company, one of the respondents herein, by its attorneys, and files its acceptance of the conditions of the decree of this court heretofore entered of record in said cause, and deposits the sum of $50,000.00, in payment of the fine heretofore imposed by this court upon the said respondent. Comes also the Attorney General, and files a motion to remove the suspension of the writ of ouster, and to award a writ of ouster against the said Waters-Pierce Oil Company, respondent herein, and to
978 make said writ of ouster absolute, and to issue execution therefor.

Which said acceptance of the Waters Pierce Oil Company is in the words and figures as follows, to-wit:

In the Supreme Court of Missouri.

STATE upon the Information of the Attorney General, Plaintiff.
v.
THE STANDARD OIL COMPANY OF INDIANA, THE REPUBLIC OIL COMPANY, and THE WATERS-PIERCE OIL COMPANY, Defendants.

Comes now the Waters-Pierce Oil Company in the above entitled cause, pursuant to the order and judgment rendered therein and files herewith a duly certified copy of a resolution of its Board of Directors, passed February 13th, 1909, wherein and whereby it agrees to accept, and does accept, the conditions of the aforesaid decree and agrees to abide by the same, and does hereby respectfully submit itself to the further orders, judgments and decrees of this Honorable Court in and concerning the premises.

And the said, The Waters-Pierce Oil Company, deposits herewith a certified check in the sum of fifty thousand dollars ($50,000.00) to the order of the Clerk of this Court in payment of the fine imposed upon this defendant by virtue of said judgment and decree.

WATERS-PIERCE OIL COMPANY,
By BOYLE & PRIEST,
J. D. JOHNSON, *Its Attorneys.*

979 STATE OF MISSOURI,
City of St. Louis, ss:

The undersigned, C. A. Pierce, President of the Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, hereby certifies that the following is a true and correct copy of the minutes of the adjourned regular monthly meeting of the Board of Directors of said Company, held at the Company's office in the City of St. Louis on the 13th day of February, 1909, as the same appears of record in the regular minute book in which is entered the minutes of meetings of the Board of Directors of said Company, to-wit:

"Office of Waters-Pierce Oil Company,
"420 Olive Street, St. Louis, Mo.

"FEBRUARY 13TH, 1909.

"At the adjourned regular monthly meeting of the Board of Directors of the Waters Pierce Oil Company, held at the Company's office in the City of St. Louis, Missouri, this the 13th day of February, 1909, there were present and participated in the meeting, H. C. Pierce, Chairman of the Board, C. A. Pierce, President, C. M. Adams, Secretary and Treasurer, and Walter F. Taylor, directors.

"The meeting was called to order by H. C. Pierce, Chairman of the Board, and Mr. Adams acted as Secretary. The minutes of the special meeting of the Board held on the 14th day of January, 1909, and of the regular monthly meeting of the Board held on the 1st day of February, 1909, were read and approved.

"The following resolution was then offered and, on motion duly seconded, was unanimously adopted, to-wit:

"'Resolved, that this Company, protesting that it has never consciously or knowingly violated any of the provisions of the laws of this State, nevertheless, does hereby accept the terms and conditions
of the order or decree of the Supreme Court of Missouri,
980 entered in the cause of the State upon the information of Herbert S. Hadley, Attorney General, against the Standard Oil Company of Indiana, the Republic Oil Company and the Waters-Pierce Oil Company, and does hereby express its willingness to abide by the same.'

"There being no further business to transact the meeting adjourned.

"H. C. PIERCE,
"Chairman of the Board.

"Attest:
"C. M. ADAMS, *Secretary.*"

In witness whereof, the said C. A. Pierce, President of said Company, has hereunto set his hand, and C. M. Adams, Secretary of said Company, has attested these presents and affixed the corporate seal of said corporation thereto. All done at the City of St. Louis, State of Missouri, this the 13th day of February, 1909.

CLAY ARTHUR PIERCE, *President.*

Attest:

[SEAL.] C. M. ADAMS, *Secretary.*

Which said motion of Attorney General to make ouster absolute against Waters Pierce Oil Company, is in the words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court en Banc., October Term, 1908.

STATE OF MISSOURI upon the Information of the Attorney General, Informant,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY (Corporations), Respondents.

981 *Motion that Judgment of Ouster be Made Absolute Against Waters-Pierce Oil Company and that Execution Issue in Enforcement Thereof.*

Comes now the State of Missouri by Elliott W. Major, Attorney-General, and shows to the Court that heretofore, to-wit, upon the 23rd day of December, 1908, this court rendered a judgment in the above entitled cause by which it was considered, ordered and adjudged, as follows:

"That the said Respondent, the said Waters-Pierce Oil Company, by its violation of the said laws and statutes of this state, against 'Pools, trusts and conspiracies,' and known as Chapter 143 of the Revised Statutes of Missouri 1899, has forfeited its charter to do business in this state and it is therefore considered, ordered and adjudged by the court that the right and franchise heretofore granted to said Waters-Pierce Oil Company, to be a body corporate and to do business and contract as such, with all other rights acquired by its certificate of incorporation, be and the same are hereby forever forfeited, annulled and set aside and said Waters-Pierce Oil Company is hereby ousted of its corporate rights and powers and franchises heretofore granted to and enjoyed by it under the laws of this state, subject, however, to the further provisions of this judgment, and for the violation of its said franchise, by forming entering into and maintaining the said pool, combination and conspiracy, to regulate, control and fix the prices of the products of petroleum, as hereinbefore specifically found and set forth and to prevent competition in the business of buying and selling said products in this

state, it is considered, ordered and adjudged by the court that in addition to said ouster, said Waters-Pierce Oil Company be fined fifty thousand dollars, and that it pay said fine of fifty thousand dollars to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of this state, and upon default and failure to pay said fine on or before said date, the State of Missouri have execution therefor to be levied by the Marshal of this court and enforced according to the laws of this state in such cases made and provided. But it is further considered, ordered and adjudged by this court, that if the said Waters-Pierce
982 Oil Company, shall pay said fine to the clerk of this court on or before the first day of March, 1909, and shall immediately cease all connection with the said other respondents herein in continuing or maintaining said pool, trust and conspiracy to fix, control and regulate the prices of nap-tha, benzine, gasoline, kerosene lubricating oil and all other products of petroleum, and shall refrain from all pools, trust and combinations to control the prices of said products of petroleum and all combines and conspiracies to prevent competition in the trade of buying and selling said products and shall furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connection with its said co-respondents herein and all other parties or companies whatsoever and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this state and its charter then the judgment of ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by order of this court and the said Waters — Oil Company is hereby given until the fifteenth day of January, 1909, to file the proofs of its willingness to comply with the judgment of this court and until that date, in no event will the writ of ouster be awarded. And it is further considered ordered and adjudged by the court that if it shall be shown to the satisfaction of this court hereafter that, notwithstanding the promises and assurances of the said Waters-Pierce Oil Company to abide by this judgment, it has violated the conditions of this judgment and has violated the said statute against 'Pools, Trusts and Conspiracies, then and in such case, the suspension of the writ of ouster shall be removed by this court and absolute ouster be enforced as directed and adjudged herein. It is further ordered and adjudged that the State of Missouri at the relation of the Attorney General have and recover its costs herein paid and expended, including the allowance of the special commissioner and the stenographer in taking and certifying the testimony herein and the fees of the witnesses and have execution therefor against all of said respond-
ents."

983 That thereafter, towit, upon January 15th, this Court made an order extending the time for said respondent, the Waters-Pierce Oil Company to "furnish this court with satisfactory evidence of its compliance with this judgment and of its intention and good faith to cease all connection with its said co-respondents herein and all other parties and companies whatsoever, and in the

future to maintain and carry on its business as an independent corporation, in obedience to the laws of this State and its charter." And that thereafter, to-wit, upon the 15th day of February, 1909, said respondent filed in this court a paper, in words and figures, as follows, towit:

"In the Supreme Court of Missouri.

STATE upon the Information of the Attorney General, Plaintiff,
v.
THE STANDARD OIL COMPANY OF INDIANA, THE REPUBLIC OIL COMPANY, and THE WATERS-PIERCE OIL COMPANY, Defendants.

Comes now the Waters-Pierce Oil Company in the above entitled cause, pursuant to the order and judgment rendered therein, and files herewith a duly certified copy of a resolution of its Board of Directors, passed February 13th, 1909, wherein and whereby it agrees to accept, and does accept the conditions of the aforesaid decree and agrees to abide by the same, and does hereby respectfully submit itself to the further orders, judgments and decrees of this Honorable Court in and concerning the premises.

And the said, the Waters-Pierce Oil Company, deposits herewith a certified check in the sum of fifty thousand dollars ($50,000.00) to the order of the Clerk of this Court in payment of the fine imposed upon this defendant by virtue of said judgment and decree.

WATERS-PIERCE OIL COMPANY.
By BOYLE & PRIEST,
J. D. JOHNSON, *Its Attorneys.*

984 STATE OF MISSOURI,
City of St. Louis, ss:

The undersigned, C. A. Pierce, President of the Waters Pierce Oil Company, a corporation organized under the laws of the State of Missouri, hereby certifies that the following is a true and correct copy of the minutes of the adjourned regular monthly meeting of the Board of Directors of said Company, held at the Company's office in the City of St. Louis on the 13th day of February, 1909, as the same appears of record in the regular minute book in which are entered the minutes of meetings of the Board of Directors of said Company, to-wit:

"OFFICE OF WATERS PIERCE OIL COMPANY,
"420 OLIVE STREET, ST. LOUIS, MO.,
"*February 13th*, 1909.

"At the adjourned regular monthly meeting of the Board of Directors of the Waters Pierce Oil Company, held at the Company's office in the City of St. Louis, Missouri, this the 13th day of February, 1909, there was present and participated in the meeting, H. C. Pierce, Chairman of the Board, C. A. Pierce, President, C. M. Adams, Secretary & Treasurer, and Walter F. Taylor, directors.

"The meeting was called to order by H. C. Pierce, Chairman of the Board, and Mr. Adams acted as Secretary. The minutes of the special meeting of the Board held on the 14th day of January, 1909, and of the regular monthly meeting of the Board held on the 1st day of February, 1909, were read and approved.

"The following resolution was then offered and, on motion duly seconded, was unanimously adopted, to-wit:

"Resolved, that this Company, protesting that it has never consciously or knowingly violated any of the provisions of the laws of this State, nevertheless, does hereby accept the terms and conditions of the order or decree of the Supreme Court of Missouri,
985 entered in the cause of the State upon the information of Herbert S. Hadley, Attorney General, against the Standard Oil Company of Indiana. The Republic Oil Company and the Waters-Pierce Oil Company, and does hereby express its willingness to abide by the same.

"There being no further business to transact the meeting adjourned.

"H. C. PIERCE,
"Chairman of the Board."

"Attest:
C. M. ADAMS, *Secretary."*

In witness whereof, the said C. A. Pierce, President of said Company, has hereunto set his hand, and C. M. Adams, Secretary of said Company has attested these presents and affixed the corporate seal of said corporation thereto. All done at the City of St. Louis, State of Missouri, this the 13th day of February, 1909.

[SEAL.] CLAY ARTHUR PIERCE, *President.*

Attest: C. M. ADAMS, *Secretary."*

And at the same time paid to the Clerk of this Court a certified check in the sum of fifty thousand dollars, but that said respondent has not filed in this Court any evidence, or any other statement, pleading or paper furnishing "satisfactory evidence, or any evidence at all, of its compliance with this judgment," or that it has "ceased all connection with its said co-respondents herein and all other parties or companies whatsoever," or that it will "in the future maintain and carry on its business as an independent corporation in obedience to the laws of this State and its charter."

The said Elliott W. Major, Attorney General of the State
986 of Missouri, appearing and prosecuting for the State in this behalf further shows to the Court that said respondent, the said Waters-Pierce Oil Company has furnished to this Court no evidence that it is not now committing and does not intend to continue to commit the acts charged in said information to have been done and committed by said Waters-Pierce Oil Company in violation of Chapter 143 of the Revised Statutes of the State of Missouri, 1899, and that it is not now maintaining, and does not intend to continue to maintain, the same connection with said co-respondents as alleged

in said information, and as this court found and adjudged in its opinion the evidence in the case had established.

Wherefore, the State of Missouri, at the relation of said Attorney General, prays the Court to remove the said suspension of the writ of ouster, and that the Court award a writ of ouster against said respondent, the Waters-Pierce Oil Company, and that said ouster be made absolute; and that execution issue therefore, and that it also require said respondent to forthwith pay such portion of the costs of said case as in the opinion of this Court should properly be adjudged against and for all other orders, judgments and decrees in the premises as may be necessary.

ELLIOTT W. MAJOR,
Attorney General for the State.

JOHN KENNISH,
Of Counsel.

And afterwards, to-wit, on the 9th day of March, 1909, the further following proceedings were had in said cause, viz:

STATE ex Inf. ATT'Y GEN., Rel.,
v.
STANDARD OIL CO. et al., Resp.

987 Now at this day, the court having seen and fully understood the motions heretofore filed by the Standard Oil Company for a rehearing and to modify the judgment herein, and the motion heretofore filed by the Republic Oil Company for a rehearing herein, doth order that said motions be, and the same are hereby overruled (Lamm and Woodson, J. J. dissenting) and the court having seen and fully understood the motion heretofore filed by the Attorney General, to make absolute the judgment of ouster against the Waters Pierce Oil Company, respondent herein, doth order that said motion be, and the same is hereby overruled. (Lamm and Woodson, J. J. dissenting). And the court having seen and fully understood the proofs of compliance with the requirements of the judgment of December 23, 1908, heretofore filed by the Waters-Pierce Oil Company, respondent herein, doth order that said proofs be approved, and the said judgment of ouster be suspended, in accordance with the said judgment of December 23, 1908, in the said cause. (Lamm and Woodson, J. J. dissenting.)

(Order filed.)

(Opinion by Woodson, J.)

Which said opinion is in words and figures as follows, to-wit:

988 In the Supreme Court of Missouri, Court in Banc, October Term, 1908.

(No. 12988.)

STATE OF MISSOURI, ex Inf. HERBERT S. HADLEY, Attorney General, Informant,

vs.

STANDARD OIL COMPANY, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Statement.

The opinion in this cause was handed down on December 23rd, 1908, where it was found that the Standard Oil Company of Indiana and the Republic Oil Company of New York had forfeited their respective rights to their licenses to do business in this State; and it was also found that the Waters-Pierce Oil Company of this State had forfeited its right to be a corporation.

In pursuance to those findings this court by decree adjudged a revocation of the licenses of the two former to transact business in this state, and by the same decree revoked and forfeited the charter of the Waters-Pierce Oil Company; but ordered a suspension of the decree and a stay of execution in the latter upon certain conditions therein stated. Said judgment and decree is in words and figures as follows:

"And now on this day, this court having fully considered the evidence in this cause, and announced and filed its opinion that the said respondents and each of them are guilty as charged in the information of the Attorney General of a violation of the statute of this state, entitled "Pools, Trusts and Conspiracies; Unlawful combinations, approved March 24th, 1877, and an Act of the General Assembly of this state, approved April 2nd, 1891, and entitled "An Act providing for the punishment of pools, trusts and conspiracies to control prices and as to evidence and prosecution in such cases," and now known as Chapter 143 of the Revised Statutes of Missouri, 1899, come now the State of Missouri, by Herbert S. Hadley,

989 the Attorney General, and the said respondents by their respective counsel, and it is now here considered, ordered and adjudged by the Court that the said respondents and each of them are guilty of violating the said Acts of the General Assembly of this State, in that at the dates and times set forth in the information of the Attorney General, they did form and enter into a pool, trust, combination and conspiracy, to regulate, fix and control the prices to be paid by retail dealers and others in the State of Missouri, for nap-tha, benzine, gasoline, kerosene, lubricating oil and other products of petroleum, and to control and limit the trade in the articles aforesaid and to prevent competition in said business of buying and selling nap-tha, benzine, gasoline, kerosene, lubricating oil and other

products of petroleum in this state, between themselves and others engaged in like business, and to deceive and mislead the public, and did control fix and maintain the prices for said articles and have prevented and destroyed competition in the purchase and sale of said products of petroleum in this state as charged in the information; and thereupon, it is now considered, ordered and adjudged by the court that by reason of the violation of said Statutes of this State, in forming and entering into and maintaining said unlawful combination, conspiracy and pool, the said Standard Oil Company, organized under the laws of the State of Indiana, and heretofore licensed to do business in this state, and the said Republic Oil Company, organized under the laws of the State of New York, and licensed to do business in this State, have each and both forfeited their respective licenses heretofore granted them by the Secretary of the State of Missouri, and it is further considered, ordered and adjudged that said license of the said Standard Oil Company of Indiana, and the said license of the said Republic Oil Company of New York, be and the same are hereby forever forfeited, annulled and cancelled, and the said Standard Oil Company of Indiana and the said Republic Oil Company of New York are hereby ousted of any and all rights and franchises granted to them, under the laws of this State, to further do business in this State; and it is further considered, ordered and adjudged that the said Standard Oil Company of Indiana and
990 the said Republic Oil Company of New York, each, for the violation aforesaid of the laws of this State, in forming, entering into and maintaining the conspiracy and combination to regulate, control and fix the prices of said products of petroleum in this State, and to control and limit the trade in said products in this State, and to prevent competition in said business, be fined fifty thousand dollars, and that each of said respondents, the said Standard Oil Company of Indiana, and the said Republic Oil Company of New York pay, each, the said sum of fifty thousand dollars to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of the State, and upon default and failure to do so, that the State of Missouri have execution therefor, to be levied and enforced according to the laws of this State, in such cases made and provided; and it is further considered, ordered and adjudged by the Court, that the said respondent, the said Waters-Pierce Oil Company, by its violation of the said laws and statutes of this State, against "Pools, trusts and conspiracies" and known as Chapter 143 of the Revised Statutes of Missouri, 1899, has forfeited its charter to do business in this State and it is therefore considered, ordered and adjudged by the Court that the right and franchise heretofore granted to said Waters-Pierce Oil Company, to be a body corporate and to do business and contract as such, with all other rights acquired by its certificate of incorporation, be and the same are hereby forever forfeited, annulled and set aside, and said Waters-Pierce Oil Company is hereby ousted of its corporate rights and powers and franchises heretofore granted to and enjoyed by it under the laws of this State, subject, however, to the further provisions of

this judgment, and for the violation of its said franchises, by forming, entering into and maintaining the said pool, combination and conspiracy, to regulate, control and fix the prices of the prod-
991 ucts of petroleum, as hereinbefore specifically found and set forth and to prevent competition in the business of buying and selling said products in this State, it is considered, ordered and adjudged by the Court that in addition to said ouster, said Waters-Pierce Oil Company be fined fifty thousand dollars, and that it pay said fine of fifty thousand dollars to the clerk of this Court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of this State, and upon default and failure to pay said fine on or before said date, the State of Missouri have execution therefor, to be levied by the Marshal of this Court and enforced according to the laws of this State in such cases made and provided. But it is further considered, ordered and adjudged by this Court, that if the said Waters-Pierce Oil Company shall pay said fine to the Clerk of this court on or before the first day of March, 1909, and shall immediately cease all connection with the said other respondents herein in continuing or maintaining said pool, trust and conspiracy to fix and control and regulate the prices of nap-tha, benzine, gasoline, kerosene, lubricating oil and all other products of petroleum, and shall refrain from all pools, trusts and combinatoins to control the prices of said products of petroleum, and all combines and conspiracies to prevent competition in the trade of buying and selling said products, and shall furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connection with its said co-respondents herein and all other parties or companies, whatsoever, and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this State, and its charter, then the judgment of ouster herein shall be and is hereby suspended, and the writ of ouster herein will not issue until expressly directed by order of this court, and the said Waters-Pierce Oil Company is hereby given until the fifteenth day of January, 1909, to file the proofs of its willingness to comply with the judgment of this court, and until that date in no event will the writ of ouster be awarded.

992 And it is further considered, ordered and adjudged by the court that if it shall be shown to the satisfaction of this court hereafter, that notwithstanding the promises and assurances of the said Waters-Pierce Oil Company to abide by this judgment, it has violated the conditions of this judgment and has violated the said statute against "pools, trusts and conspiracies," then and in such case the suspension of the writ of ouster shall be removed by this court and absolute ouster be enforced as directed and adjudged herein. It is further ordered and adjudged that the State of Missouri at the relation of the Attorney General have and recover its costs herein paid and expended, including the allowance of the special commissioner and the stenographer in taking and certifying the testimony herein and the fees of the witnesses and have execution therefor against all of said respondents."

Within ten days after the opinion was handed down, the Standard Oil Company of Indiana and the Republic Oil Company filed their motions for a rehearing; and subsequently thereto the same companies filed another motions suggesting that the decree as to them be modified so as to suspend the decree and stay the execution of ouster upon such terms as the court might think just and equitable.

On January 15th, 1909, this court made an order extending the time thirty days for the respondent, Waters-Pierce Oil Company to comply with the conditions upon which the judgment and the writ of ouster would be stayed.

On February 15th, 1909, the respondent, Waters-Pierce Oil Company, filed in this court a document containing the proofs required by the decree showing, as the company contends, its compliance with the conditions upon which a suspension of the judgment and stay of writ of ouster would be ordered.

On the same day, but subsequent thereto, the Attorney General filed a motion in the cause, asking the court to order the issuance of the writ of ouster against the Waters-Pierce Oil Company,
993 because the evidence furnished by it does not show a compliance with the requirements of the judgment.

In the disposition of these motions, I will consider the Waters-Pierce motion first, for the reason that it may be summarily disposed of as it has no motion pending for a re-hearing.

The written document before mentioned, which purports to contain the proofs required by the decree to be furnished to satisfy the court that the Waters-Pierce Oil Company had in good faith complied with the conditions upon which a suspension of the judgment and a stay of a writ of ouster would be ordered, is in words and figures as follows (Caption omitted):

"Comes now the Waters-Pierce Oil Company in the above entitled cause, pursuant to the order and judgment rendered herein, and files herewith a duly certified copy of a resolution of its Board of Directors, passed February 13th, 1909, wherein and whereby it agrees to accept, and does accept the conditions of the aforesaid decree and agrees to abide by the same, and does hereby respectfully submit itself to the further orders, judgments and decrees of this Honorable Court in and concerning the premises.

And the said, the Waters-Pierce Oil Company, deposits herewith a certified check in the sum of fifty thousand dollars ($50,000.00) to the order of the Clerk of this Court in payment of the fine imposed upon this defendant by virtue of said judgment and decree.

WATERS-PIERCE OIL
COMPANY,
By BOYLE & PRIEST,
J. D. JOHNSON,
Its Attorneys.

STATE OF MISSOURI,
City of St. Louis, ss:

The undersigned, C. A. Pierce, president of the Waters-Pierce Oil Company, a corporation organized under the laws of the State of

Missouri, hereby certifies that the following is a true and correct copy of the minutes of the adjourned regular monthly meeting of the Board of Directors of said Company, held at the Com-
994 pany's office in the City of St. Louis on the 13th day of February, 1909, as the same appears of record in the regular minute book in which is entered the minutes of meetings of the Board of Directors of said Company, to-wit:

"OFFICE OF WATERS-PIERCE OIL COMPANY,
#420 OLIVE STREET, ST. LOUIS, MO.,
February 13th, 1909.

"At the adjourned regular monthly meeting of the Board of Directors of the Waters-Pierce Oil Company, held at the Company's office in the City of St. Louis, Missouri, this, the 13th day of February, 1909, there were present and participated in the meeting, H. C. Pierce, Chairman of the Boar-, C. A. Pierce, President, C. M. Adams, Secretary and Treasurer, and Walter F. Taylor, directors.

"The meeting was called to order by H. C. Pierce, Chairman of the Board, and Mr. Adams acted as Secretary. The minutes of the special meeting of the Board, held on the 14th day of January, 1909, and of the regular monthly meeting of the Board, held on the 1st day of February, 1909, were read and approved.

"The following resolution was then offered and, on motion duly seconded, was unanimously adopted, to-wit:

"Resolved, that this Company, protesting that it has never consciously or knowingly violated any of the provisions of the laws of this State, nevertheless, does hereby accept the terms and conditions of the order or decree of the Supreme Court of Missouri, entered in the cause of the State upon the information of Herbert S. Hadley, Attorney General against the Standard Oil Company of Indiana, The Republic Oil Company and the Waters Pierce Oil Company, and does hereby express its willingness to abide by the same."

"There being no further business to transact the meeting adjourned.

H. C. PIERCE,
Chairman of the Board.

Attest:

C. M. ADAMS, *Secretary.*"

995 In witness whereof, the said C. A. Pierce, President of said Company, has hereunto set his hand, and C. M. Adams, Secretary of said Company, has attested these presents and affixed the corporate seal of said corporation thereto. All done at the City of St. Louis, State of Missouri, this the 13th day of February, 1909.

[SEAL.] CLAY ARTHUR PIERCE, *President.*

Attest:

C. M. ADAMS, *Secretary.*

Opinion.

I.

The Attorney General, in his motion for a writ of ouster, contends that the evidence furnished by the Waters-Pierce Oil Company wholly fails to show that it has severed its trust relations with its co-respondents and with all other parties and corporations whatsoever; and that it entirely fails to show to this court that it intends in good faith to obey the judgment of the court, and to conduct its business as an independent corporation, according to the laws of this state and within the scope of its charter, rights and powers, as required by the judgment.

By reading the foregoing judgment it will be seen that this court found the Standard Oil Company of Indiana, the Republic Oil Company of New York, and the Waters-Pierce Oil Company of this state guilty of violating the laws of this state prohibiting pools, trusts and conspiracies, and all unlawful combinations to regulate, fix and control the prices to be paid by retail dealers and others in this state for naptha, benzine, gasoline, kerosene, lubricating oil and all other products of petroleum, and to control and limit the trade in the articles aforesaid and to prevent competition in said business of buying and selling any and all of said products of petroleum in this state between themselves and *others engaged in like business* and to deceive and mislead the public, etc. in that they did form said combinations and maintained the prices for said articles and did
996 destroy competition in the purchase and sale of all of said products of petroleum in this state, etc.

And it is further seen from said judgment, that it was considered, ordered and adjudged by the court that by reason of the violation of said laws, in forming and entering into and maintaining said unlawful combination, conspiracy and pool, the said Standard Oil Company of Indiana, and the Republic Oil Company of New York had each forfeited their respective licenses to do business in this state; and it was further ordered and adjudged that they were thereby ousted of any and all rights granted to them under the laws of this State to further do business herein.

Then follows the assessment of a penalty of $50,000 against each of those companies, and execution was ordered, etc.

The decree then proceeds to order, adjudge and decree that the Waters-Pierce Oil Company had by its violation of the laws of this State prohibiting pools, trusts and conspiracies, etc. forfeited its charter, and right to do business herein; and it was further ordered and "adjudged that the right and franchises heretofore granted to the Waters-Pierce Oil Company to be a body corporate and to do business and contract as such with all other rights acquired by its certificate of incorporation, was thereby *forever forfeited, annualled and set aside*, and the said Waters-Pierce Oil Company was thereby *ousted of its corporate rights, powers and franchises heretofore granted to it under the laws of this state.*"

The decree then provides that the same may be suspended in its

operation, as to the Waters-Pierce Oil Company, upon certain conditions precedent therein stated. It then requires the company to furnish the court with satisfactory proof that it has performed those conditions, which conditions I will again briefly state and number for the purpose of accentuating them.

First. That the company pay to the clerk of this court on or before the first day of March, 1909, the sum of $50,000.

997 Second. That said company should immediately cease all connection with the other respondents herein in continuing or maintaining said pool, trust and conspiracy to fix, control and regulate the prices of the products of petroleum, and shall refrain from all pools, trusts and combinations to control the prices of said products.

Third. That said company should refrain from all combines and conspiracies to prevent competition in the trade of buying and selling said products, and in deceiving the citizens of the state as to whom they are purchasing said products.

And fourth. That said company should "furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connections with its said corespondents herein, and with *"all other parties or companies whatsoever,* and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this state and its charter, *then the judgment of ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by order of this court,* and the said Waters-Pierce Oil Company is hereby given until the fifteenth day of January, 1909, to file the proofs of its willingness to comply with the judgment of this court, and *until that time in no event will the writ of ouster be awarded."*

The meaning and scope of the judgment must be gathered from its terms when read in the light of the statutes governing pools, trusts and conspiracies, and the opinion upon which the judgment is based.

When we so read the judgment there can be, in my opinion, not a shadow of doubt but what the judgment of forfeiture of the charter of the Waters-Pierce Oil Company was absolute and unconditional after the said 15th day of January, 1909, which decree is in strict compliance with the mandate of the statute applicable to such cases; and the writ of ouster can be suspended only upon the ex-

998 *press order of this court* after said satisfactory proofs have been furnished; nor can there be any doubt but what it was the intention of the court, as expressed in the judgment, that the decree of forfeiture of the charter was to be suspended and the writ of ouster was to be stayed when the company furnished the court satisfactory proof of its compliance with the requirements thereof, and not otherwise;

We will now come to the consideration of the questions, first, has the Waters-Pierce Oil Company severed its trust relations with its corespondents and all other "parties and companies whatsoever?" And, second, are the proofs furnished satisfactory evidence to the

minds of the court that the company has severed all said trust relations?

For convenience we will discuss those two questions in the inverse order stated:

Omitting all formal parts, the following is all the evidence the company has furnished to this court of its compliance with the conditions upon which a suspension of the judgment would be ordered, to-wit;

"And the said, The Waters-Pierce Oil Company, deposits herewith a certified check in the sum of Fifty thousand dollars ($50,000) to the order of the clerk of this court, in payment of the fine imposed upon this defendant by virtue of said judgment and decree."

Then follows a resolution duly adopted by the board of directors of the company, which was held on February 13th, 1909, which is in words and figures as follows:

"Resolved that this company, protesting that it has never consciously or knowingly violated any of the provisions of the laws of this state, nevertheless, does hereby accept the terms and conditions of the order or decree of the Supreme Court of Missouri, entered in the cause of the State upon the information of Herbert S. Hadley, Attorney General, against the Standard Oil Company of Indiana, the Republic Oil Company of New York, and the Waters-Pierce Oil Company, and does hereby express its willingness to
999 abide by the same."

The entire evidence and proofs furnished by the company of its compliance in good faith with the judgment of the court are embraced within the two quotations last above stated.

That evidence is not responsive to the requirements of the judgment except in the payment of the $50,000 penalty imposed, but is at total variance therefrom, and tends strongly to disprove the company has severed its trust relations with any of the parties referred to in the judgment.

In passing we might state that in entering the decree of forfeiture against the Waters-Pierce Oil Company, we endeavored to temper justice with mercy toward it, because of the domination and management of the latter by the Standard Oil Company of New Jersey, by offering it an opportunity to escape the judgment of ouster by requiring to do the things stated therein, and grouped under the four headings before mentioned.

According to the grouping, the first requirement the court exacted of the company was that it pay to the clerk of this court the sum of $50,000 for the use and benefit of the state on or before the 1st day of March 1909.

That requirement has been fully complied with, and the company has furnished the court with satisfactory proof that it has paid said sum to the clerk of this court for the uses and purposes therein stated.

The second requirement was that it should immediately cease all connection with the other respondents herein in continuing or maintaining the pool, trust and conspiracy to fix, control and regulate the

prices of the products of petroleum, and should refrain from all pools, trusts and combinations to control the prices of said products.

Has the company complied with that requirement? If so, it has furnished this court with no evidence whatever of that fact. The only evidence filed herein for all purposes is as follows; "This
1000 company (naming the Waters-Pierce Oil Company) protesting that it has never consciously or knowingly violated any of the provisions of the laws of this state, nevertheless, does hereby accept the terms and conditions of the order or decree * * * entered in the cause * * * and does hereby express its willingness to abide by the same."

At most that statement, which is contained in a resolution adopted by the Board of Directors of the company, only expresses a "willingness to abide by the same," (meaning the judgment of forfeiture) in the future, but not one word is found therein which even remotely indicates that the company has severed any or all of its trust relations with its co-respondents, or with any other persons;

Clearly, the company does not by the use of that language intend motely indicates that the company has severed any or all of its trust relations with anyone; but, upon the contrary, it states that it has "never consciously or knowingly violated" the anti-trust laws of this state. That is equivalent to saying it has not complied with that requirements of the judgment for the reason that if it is ignorant of ever maintaining a pool trust or combination in restraint of trade, then, of course, it would be non-sense to contend that it has severed its trust relations with its co-respondents and other persons. In other words, if it did not belong to the trust and combination, it could not sever its relations with those trusts or combinations—that is a self evident proposition. Not only that, that statement is not true in point of fact, for it has not only violated the anti-trust laws of this state, as was found to be true by the unanimous opinion of the court, heretofore handed down, in this case, but it also had knowledge thereof, for the reason that the record in this case conclusively shows that for years it has been violating not only the laws of this state but has been violating similar laws of other states, and has during all that time been engaged in scheming and working out plans and means by which those laws could be violated with impunity, and at the same time conceal that fact from the
1001 officers of the law, and thereby escape just punishment. The record in this case conclusively shows, and we so found in express terms, that the scheme of conspiracy adopted in this case was entered into for the very purpose of concealing its lawlessness, and it was upon that conspiracy and knowledge the information of the Attorney General, Herbert S. Hadley, was based, and upon which respondents were found and adjudged guilty, and at this late date to again advance that false and threadbare plea of not guilty, in order to escape the judgment of ouster rendered therein, is, to say the least, a most unique proceeding in our jurisprudence.

We found that plea to the information to be untrue, and adjudged the respondents guilty, and in consequence thereof rendered the judgment of forfeiture against this company and its co-respondents,

and to now permit it to come in and successfully interpose the same pleas in order to escape that same judgment would be unwise on the part of the court. Such argument if sound would do credit to a ring maker, because of its circular form.

But that is not the only view to be taken of the evidence filed in this case as proof that this company has complied with the judgment and severed all trust relations with all parties and companies. It is evasive—neither denies or affirms that fact. It is characteristic of the avation and deceipt which has been practiced by the Standard Oil Company of New Jersey for many years past, as is disclosed by the record in this case; and one of the strongest evidences in the case which shows the unlawful conspiracy which existed between respondents and the New Jersey Company has not been dissolved is the so-called proof of compliance with the decree of the court filed herein. It shows that the Waters-Pierce Oil Company is still dominated by the former, and cannot on that account separate itself from the unlawful combination into which it was forced to enter, and by which it is detained as a helpless victim, powerless to either affirm or deny its compliance with the requirements of the judgment, and the New Jersey Company there hanging with death like tenacity
1002 to the unlawful conspiracy, the organization and construction of which is the most gigantic and perfect piece of mechanism I have ever read or heard of, with the lingering and fond hope that it may still reap the golden harvest sowed, not with its own but by other hands.

One would judge from the character of the evidence produced that the company was laboring under the erroneous impression that it was conferring a great favor upon this court by producing the proofs filed herein, and was totally ignorant of the fact that the offer made to it by the Court to suspend the judgment of forfeiture upon condition that it would furnish satisfactory proof of the dissolution of the trust, was made for its benefit.

But independent of all this, can any intelligent, fair-minded disinterested person believe for a moment that these respondents have severed their trust relations with each other or with the Standard Oil Company of New Jersey. We think not; but if possible we are mistaken in that fact, then let them come into this court and produce sworn testimony showing the withdrawal of respondents from the trust and the dissolution of that unlawful conspiracy and combination in order that there may be no doubt or uncertainty in that regard. If it is a fact, then that fact is susceptible of direct and positive proof; and should now be made certain, before it is too late.

Clearly the simple declaration of the Waters-Pierce Company of its acceptance of the terms of the decree and a bare expression of its "willingness to abide by the same" is in no sense a performance of the conditions imposed upon it by the terms of the decree, or that the unlawful conspiracy to which it belonged had been dissolved, or that it had in good faith determined to refrain from re-entering such an unlawful combination in the future. The decree requires action on the part of the Company, and not simply the adopting of a meaningless resolution by its Board of Directors. That resolution

shows no act performed whatever, but consists simply of a bold declaration of its willingness to abide by the decree, without
1003 declaring it had withdrawn from the pool, trust or combination, or expressing its intention to do so in the future.

The most dignified thing that can be truthfully said of the so-called proofs filed, when read in the light of the decree, is that they are deceptive and meaningless, wholly foreign to the requirements of the decree and not responsive thereto;

We, therefore, hold that the Waters-Pierce Oil Company has furnished this court no proof whatever tending to show that it has, in good faith, severed all trust relations with its co-respondents and with all other persons who belong to unlawful combinations in restraint of trade.

What we have before stated regarding proofs furnished as to the requirements of the decree, grouped under the second division thereof, applies equally well to those stated under the third subdivision of the decree, before mentioned, and for that reason I will not further notice those requirements;

That portion of the fourth subdivision of the decree, expressed in the following language: "and shall (the Waters-Pierce Oil Company) furnish this court with satisfactory evidence of its compliance with this judgment and of its intention in good faith to cease all connections with its said co-respondents herein and all other parties or companies whatsoever, and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this state and its charter, then the judgment of ouster herein shall be" suspended, etc., was intended to compel the Waters-Pierce Oil Company not only to sever its trust relations with its co-respondents herein, but also to sever such relations with the Standard Oil Company of New Jersey, and all of its subsidiary companies and all other persons, co-partnerships, companies and corporations whatsoever and wheresoever situated.

The very object and purpose of the Attorney General in bringing this suit was to destroy the "Oil Trust" existing in this state,
1004 and thereby restore competition between the dealers in the products of petroleum. He knew that by revoking the licenses of the Indiana and Republic companies, and by forfeiting the charter of the Waters-Pierce Oil Company, who constituted all of the parties to the trust who were doing business in this state, that the "Oil Trust" would thereby be killed and completely destroyed with every root and branch thereof in so far as it affected this state. With that purpose in view he instituted this suit, and this court found all three of the respondents guilty, as charged in the information, and by the judgment herein the court revoked the licenses of the two former companies and forfeited the charter of the Waters-Pierce Oil Company for the express reason that they had formed and entered into a pool, trust and combination in restraint of intra-state trade; and when the court found them guilty of that offense, and entered the decree revoking the licenses of the two former companies, and forfeiting the charter of the Waters-Pierce Company, the decree of necessity, not only severed the relations of respondents with that

pool, trust and combination, but in addition thereto, as regards the latter company, the decree also destroyed its trust, and all other relations for that matter, with all trusts, pools and combinations in restraint of trade, whether natural persons, co-partnerships, companies or corporations, whatsoever, situate, in this state or elsewhere, for the obvious reason that the forfeiture of the charter took away the very life of the Waters-Pierce Oil Company and completely destroyed its very being, as completely and effectually as would the taking the life of a natural person destroy his existence and business relations with all, whomsoever.

In the trial of this case, in proving the existence of the pool, trust and conspiracy existing between the respondents herein, the evidence introduced by the Attorney General also uncovered and proved beyond cavil that there existed not only a pool, trust and conspiracy between the three respondents herein, but that there also
1005 existed between them and numerous other persons, companies and corporations similar pools, trusts and combinations and among others who were parties thereto was the Standard Oil Company of New Jersey, and all of its subsidiary corporations named or mentioned in the opinion heretofore handed down. And the evidence conclusively shows, and said opinion finds and holds that the combination existing between these respondents also existed between them and those companies, and was but a part of said larger conspiracy and combination which existed between them and the said Standard Oil Company of New Jersey and all of its said subsidiary corporations. And, as before stated, the forfeiture of the Waters-Pierce Oil Company's charter destroyed its very being, and of necessity, incidentally but completely, severed and destroyed all of its relations, trust and otherwise, with its co-respondent, the Standard Oil Company of New Jersey, and with all of the latter's subsidiary corporations; and the language of the decree last quoted was employed and was inserted therein for the express purpose of compelling the Waters-Pierce Oil Company to sever its relations with its co-respondents and with *"all other parties or companies whatsoever,"* which of course, was intended to and did include the Standard Oil Company of New Jersey and all of its subsidiary companies, for the reason that the evidence preserved in this record fails to show that there were any other persons or corporations belonging to the pool, trust and combination charged in the information, except the New Jersey Company and its subsidiary companies.

The last opinion handed down in this case unanimously held that the Standard Oil Company of New Jersey was the parent of the respondents in this case, and of all its other subsidiary corporations mentioned therein; and that the pool, trust and combination charged in the information filed herein was but a part of the "oil Trust" which was composed of the New Jersey Company and all of its subsidiary companies. The first opinion herein was written by Lamm, J., which was concurred in by all members of the
1006 court, also held in effect that the "Oil Trust" was headed by the New Jersey Company, and that it was composed of that company, the respondents herein and all of the former's subsidiary

companies. Not only that, but the undisputed evidence in the case shows that the trust relation existing between the New Jersey Company and the subsidiary companies was based upon and traceable through the common ownership of the capital stock of said various companies by the New Jersey Company; and both of said opinions delivered herein so found the facts to be, and the judgment rendered in pursuance to the last opinion revoked the licenses of the Indiana and Republic companies, and forfeited the charter of the Waters-Pierce Company, because of the existence of those facts. And since the undisputed testimony in the case shows that the New Jersey Company owns sixty-two per cent of the capital stock of the Waters-Pierce Company, and thereby completely dominates and manages the latter's business, and then under that view of the case should we exclude from the state the two former companies, without compelling the Waters-Pierce Company to sever its stock, and all other trust relations with the New Jersey Company, would have the effect to intensify and strengthen the "oil Trust" in the State by giving the New Jersey Company a complete monopoly, through its one creature and agent, the Waters-Pierce Oil Company, over not only that part of the state now controlled by the Waters-Pierce Company, but would extend its business over all that part of the state now controlled by the Indiana and Republic companies. In other words, instead of the judgment of the court destroying the "oil Trust" existing in the state, as commanded by the express letter of the statute, and for which object this suit was brought, it will virtually and for all practical purposes substitute the Standard Oil Company of New Jersey in the place of the excluded companies, with permission and authority of this court, in violation of the express terms of the statute of the state, to not only continue to transact its monopolistic business over the north half of the state, as it is now doing, through the Indiana Company, but will through its agent and figurehead, the Waters-Pierce Oil Company, which
1007 it completely dominates, extend its business over the south half of the state also; or the New Jersey Company may in the exercise of its pleasure have the Waters-Pierce company extend its business, which is owned and controlled by it, over the north half of the state, and conduct the same business the New Jersey company has been and is now conducting in that part of the state in the names of the excluded companies, the Indiana and Republic companies;

In my judgment this court should not under that flimsy, gauzy make-shift perpetuate and strengthen the "Oil Trust" now existing in this state, which has proven so injurious to the people hereof, and which will prove to be of greater damage to them in the future, if this illegal, unjust and iniquitous scheme is permitted to go through.

The judgment of ouster heretofore entered against the respondents completely destroyed the "Oil Trust" of this state, and it should not be resuscitated under any conditions or pretexts whatsoever; and to do so would work an irreparable injury upon the people of the state, and would be absolutely inexcusable and indefensible.

While I fully realize the fact, that the Waters-Pierce Oil Company is complete- controlled and dominated by the Standard Oil Company of New Jersey; and for that reason I naturally presume the former is laboring under great difficulties in trying to comply with the requirements of this court in freeing itself from the clutches of the latter, and in furnishing us with satisfactory proofs that it has severed all stock and other trust relations with the latter, yet that very domination shows that if the judgment of forfeiture heretofore entered against the Waters-Pierce Company should be suspended without first requiring a complete severance of their trust relations, that it would continue to violate the anti-trust laws of this state, through the Waters-Pierce Oil Company, just as it is now doing through the Indiana and Republic Oil Companies. But this severance can be completely made without injury to the property or the legitimate business interest of either the Waters-Pierce
1008 Oil Company or to the Standard Oil Company of New Jersey; and because of my dislike to uselessly damage property rights and business interest, I am in favor of giving the Waters-Pierce Company another opportunity to sever its stock and other trust relations with its co-respondents and with the Standard Oil Company of New Jersey, and with all other persons and companies whatsoever; and thereby enabling it to carry on, in the language of the decree of ouster, an independent business, according to the laws of this state and of its charter granted thereunder. But if it should turn out that the Waters-Pierce Oil Company should be unable to sever its stock and trust relations with the New Jersey Company and all of its subsidiaries because of its inability to induce or persuade the latter company to dispose of its stock and voluntarily retire from all illegal pools, trusts and combinations existing between them, then clearly it would be the New Jersey Company and not this court which would inflict the injury upon the Waters-Pierce Company, and through the latter injure itself, for the reason it owns sixty-two per cent of the capital stock of the latter, and, consequently, whatever damage might result to the latter, sixty-two per cent thereof would ultimately fall upon the New Jersey Company. If these considerations are not sufficient inducements to cause the latter to liberate the former and thereby enable it to sever its stock and other trust relations with all persons, co-partnerships, companies and corporations wheresoever, then it will be the misfortune of the Waters-Pierce Company for having been found in bad company, and for having entered into an unlawful pool, trust and conspiracy from which it is unable to extricate itself. If that condition should present itself before the court, then this court should not shrink one iota in the discharge of its duty, but should promptly and fearlessly refuse the request to suspend the judgment of forfeiture which was entered against respondents on December 23rd, 1908. To suspend the judgment of ouster heretofore entered without first requiring the Waters-Pierce Company to sever all its stock and other trust relations with all parties would be inexcusable for it would
1009 bring back to life and again put into operation the "Oil Trust," the greatest octopus of all the trusts, which hang like so many black clouds over this fair land of ours.

But, as before stated, and for the purpose of avoiding injury to property rights and the large business interests of the Waters-Pierce Oil Company, I am willing to suspend the judgment of forfeiture heretofore rendered against it upon condition that it perform the following specified things and requirements and furnish to this court, on or before April 1st, 1909, the character of evidence hereinafter specified, showing that it has, in good faith, performed those things, namely;

First. The Waters-Pierce Oil Company must, in good faith, withdraw and completely sever all its trust relations with the pool, trust and combination charged in the information and of which it now stands convicted by the judgment of this court.

Second. It must, in good faith, sever its stock and all other trust relations with the Standard Oil Company of New Jersey and with all of its subsidiary companies and corporations, as well as all other persons, companies and corporations which are owned, controlled or manages by said New Jersey Company, or by any of said subsidiary companies.

Third. That it will sever all its stock and other trust relations, if any exist, between it and all of the stockholders, officers and agents of the New Jersey Company; and any and all of the stockholders, officers and agents of any and all of said subsidiary companies.

Fourth. That it will sever all its stock and other trust relations if any exist, between it and all other persons, co-partnerships, companies and corporations whomsoever and wheresoever located.

And said facts must be proven to the complete satisfaction of this court by the following character of testimony:

First. By the affidavits of the President, Secretary and Treasurer of the Waters-Pierce Oil Company, stating that it has, in good faith, withdrawn from and completely severed all of its trust rela-
1010 tions with the pool, trust and combination charged in the information filed in this cause, and of which its stands convicted by the judgment of this court.

Second. By the affidavits of the same officers of the Waters-Pierce Company, stating that the Standard Oil Company of New Jersey, none of its subsidiary companies, and none of the stock-holders, officers or agents of it, or of any or all of said companies, own, control or manage any of its stocks, to the best of their knowledge and belief; also the affidavits of any and all purchasers, owners or holders of said stocks, stating that they are the owners and holders, or whatever interest they may have in the same, and that the Standard Oil Company of New Jersey, nor any of its subsidiary companies, and none of its or their stock-holders, officers or agents own or has any interest whatever in said stocks.

Third. The affidavits of the same officers of the Waters-Pierce Company, stating that there are no stocks or other trust relations existing between it and any or all of the stock-holders, officers and agents of the New Jersey Company, or between it and any or all of the stockholders, officers or agents of any or all of said subsidiary companies thereof;

Fourth. By the affidavits of the same officers of the Waters-Pierce

Company, stating that there exists no stock or other trust relations of any character whatever between it and any person, co-partnership, company or corporation whatsoever.

The words "Pool, trust, combination" and "conspiracy" used herein are used in the sense in which they are used in Chapter 143 of Revised Statutes of 1899, as construed by this court and the Court of Appeal of this State, and the affiants in making said affidavits must state therein that they use those words in that sense.

The subsidiary companies and corporations herein referred to are all of those which are owned or controlled by the Standard Oil Company of New Jersey by any or all of its stock-holders, officers or agents.

1011 The affidavits before mentioned and required to be filed herein must be subscribed and sworn to in this state and before some officer thereof who is by law authorized to administer oaths.

Upon the performance of the foregoing conditions and requirements, I am willing to vote to suspend the judgment of forfeiture heretofore rendered by the court against the Waters-Pierce Oil Company, and which is now in full force and effect, but until those conditions and requirements are strictly performed and complied with I dissent from the court's order, judgment and decree suspending said judgment of forfeiture, or to in any manner interfere with, prevent, hinder, or further delay the issuance of the writ of ouster in pursuance to said judgment. And if those conditions are not performed within the time before designated, then, in my judgment, the writ of ouster should go, and that the clerk of this court should be ordered to return to the company the $50,000 deposited by it with him, and that execution should be ordered to issue on the judgment for the purpose of collecting the $50,000 assessed against it as a penalty for its violation of the laws of this State. Since writing the above the majority of the court have overruled the motion of the Attorney General for a writ of ouster to which I dissent for the reasons before stated.

II.

My views regarding the application of the Standard Oil Company of Indiana to have the court to make an order suspending the judgment herein revoking its license to do business in this state in order that it may conduct and carry on an independent legitimate business herein are expressed in the following paragraphs.

First. While I recognize the fact that this company is owned by and is the right arm of the Standard Oil Company of New Jersey and has done as much and perhaps more than any other agency of that company in *fostering* the "Oil Trust" upon the people of this state and country, yet I can see no sound reason for totally excluding it from doing business in this state, provided it will con-

1012 fine itself to the transaction of legitimate business, free and independent of all pools, trusts and combinations of whatsoever character; and will completely sever all of its stock and other trust relations with the Standard Oil Company of New Jersey, with

all of its subsidiary companies hereinbefore mentioned, and with all of the stock owners, officers and agents of all of said companies; and also with all other persons, co-partnerships, companies and corporations whatsoever and wheresoever situate.

Second. If this company, would, in good faith, conduct its business free and independent of all pools, trusts and combinations as indicated and stated in the previous paragraph, then the company would be capable of doing and could, in fact, render great and valuable services to the entire people of the state, and would at the same time avoid the great damage and injury which will be entailed upon the vast property and business interests of the company located in this state and elsewhere, if the judgment of ouster is permitted to stand unsuspended. If, upon the other hand, the court can shear the business of the company of its illegal and harmful features by compelling the company to sever all of its stock and other trust relations with all persons whomsoever, as before indicated, and at the same time preserve the good features of its business, which would be of vast benefit to the material welfare of the state; and also justly punish the company commensurately with the great wrongs and injuries it has perpetrated against the State and upon her people, then, in my judgment, the court should do so; or rather should make an order suspending the judgment of revocation during good behavior, upon the same terms and conditions as hereinbefore stated regarding the suspension of the judgment of forfeiture rendered against the Waters-Pierce Oil Company, and the performance of those conditions and requirements be established to the perfect satisfaction of the court by the same quantity and character of evidence there indicated and there required to be furnished by that company.

1013 While this court has no power or authority to compel the Standard Oil Company of New Jersey to sell and dispose of its stock in the respondent companies, yet we have the unquestionable power to do just what has been done, namely to revoke the license of the Standard Oil Company of Indiana, and to absolutely forfeit the charter of the Waters-Pierce Oil Company; and we also have the same unquestionable authority to decline and refuse to suspend said judgment of revocation and forfeiture without the Standard Oil Company of New Jersey will first sell and dispose of its stock and other holdings in the Standard Oil Company of Indiana and the Waters-Pierce Oil Company of this state, and completely sever all its other trust relations in those two companies in the manner before indicated; and this court would do itself and the people of the state an irreparable injury by suspending said judgment without first requiring the New Jersey Company to voluntarily dispose of its stock in said companies and completely sever all of its other trust relations with respondents, as before indicated.

Third. The order, if made, suspending the judgment of revocation should be so drawn as to authorize and permit the court at any time upon motion of the Attorney General or upon its own motion to set aside and nullify the order suspending the judgment of revocation, and thereby leave the judgment in full force and effect as completely and effectually as though the order of suspension had

never been made; and said order should expressly provide that this court reserves the exclusive right to say and determine what is sufficient cause and justification for the court to revoke the order suspending the judgment of revocation, and authorize it to order the writ of ouster to issue.

Fourth. In my judgment it is fairly deducible from the record in this case, that, after allowing this company six per cent interest per annum on the cash value of all of its property and assets located in this state from May 28th, 1900, the day when the Waters-Pierce Oil Company was incorporated, the same being the date upon which
1014 the pool, trust and combination charged in the information was formed and entered into by the respondents herein, down to this time, and then deduct the amount thereof, from the amount of the total net profits realized by the company from the people of this state, then there would remain more than $1,000,000 of net illegal profits exacted and illegally collected from the people of this state. By depriving this company of those illegal profits the court would thereby largely remove the incentive and temptation for it to again violate the laws of this state.

I am, therefore, of the opinion that before this court would be justified in making an order herein suspending the judgment of revocation, the Standard Oil Company of Indiana should be required to pay to the Clerk of this Court for the use and benefit of the State of Missouri the sum of $1,000,000, and be required to strictly comply with the conditions and requirements before mentioned herein and as stated in paragraph one hereof in relation to the Waters-Pierce Oil Company.

Fifth. If the Standard Oil Company of Indiana will, within ten days from this date, file with the Clerk of this Court a written statement expressing its willingness and intention to comply strictly with all of the foregoing conditions and requirements, then I would be in favor of giving the Company until April 1st, this year, in which to perform the conditions imposed, and in which to furnish to the court the evidences of that performance; and if it should then satisfactorily appear to the court from that evidence that it had in good faith performed those conditions and requirements, then I would be willing to vote for an order suspending the judgment of revocation heretofore rendered against it upon the conditions before stated.

By adopting the policy above pointed out the court would enforce the laws of the State against respondents, destroy the "Oil Trust" existing in this State, do justice to respondents and the state, and at the same time permit said companies to carry on an inde-
1015 pendent, legitimate business in the state, both of which are strong and are capable of contributing largely to the material welfare of the state and to the people thereof.

Sixth. If said company does not file a statement within ten days indicating its intention of performing the foregoing conditions and requirements, then, after the expiration of that time, the Courts should take up and pass upon its motion for a rehearing, heretofore filed herein.

A. M. WOODSON, *Judge.*

1016 And which said order is in words and figures as follows, to-wit:

In the Supreme Court of Missouri, Court in Banc, October Term, 1908.

12988.

STATE ex Inf. ATTORNEY GENERAL
vs.
STANDARD OIL COMPANY et al.

The Waters-Pierce Oil Company having tendered into court the amount of the fine imposed on it by the judgment of this court, and having given satisfactory evidence of its purpose to henceforth so conduct its business as not to violate the law of this state in regard to pools, trust and conspiracies, it is ordered by the court that the clerk of this court receive the money so tendered and pay the same into the State Treasury and it is further ordered that the judgment of this court of date December 23rd, 1908, ousting the Waters-Pierce Oil Company of its charter and adjudging all its rights and privileges thereunder forfeited and annulled, be and the same is hereby suspended until otherwise ordered by the court, but the court will retain jurisdiction of the cause for the purpose of setting aside and annulling this order or modifying the same if the court should hereafter on motion of the Attorney General or its own motion become satisfied that the Waters-Pierce Oil Company is at that time or has been conducting its business in a manner forbidden by the law of this state in relation to pools, trust and conspiracies.

And afterwards, to-wit, on the 10th day of March, 1909, the further following proceedings were had in said cause, viz :

"Quo Warranto."

STATE OF MISSOURI ex Informatione ELLIOTT W. MAJOR, Attorney General, Informant,
vs.
1017 STANDARD OIL COMPANY, REPUBLIC OIL COMPANY, and WATERS-PIERCE OIL COMPANY, Respondents.

Now at this day, there are presented to the Honorable Leroy B. Valliant, Chief Justice of the Supreme Court of Missouri, in Chambers, writs of error to the Supreme Court of the United States, citations directed to said informant, citing and admonishing it to appear at the Supreme Court of the United States on the 8th day of April, 1909; assignments of errors, and bonds, each in the sum of one hundred thousand dollars, which said writs of error are allowed, said citations signed and issued; said assignments of error filed; and said

bonds approved and ordered filed, and made a part of the records herein.

Which said assignments of error are in words and figures as follows, to-wit:

1018 In the Supreme Court of Missouri.

No. 12988.

STATE OF MISSOURI, on the Information of HERBERT S. HADLEY, Attorney General,

vs.

STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Application for Writ of Error.

Now comes the Standard Oil Company of Indiana one of the respondents herein, and respectfully represents:

A judgment has been entered in above entitled cause, fining it in the sum of fifty thousand dollars, and ousting it from the right to do business in the state. The court in its judgment erred:

1. In denying to respondent the protection of the constitution of the United States and amendments thereto in each of the respects claimed in its amended answer and return, and also in its motion for rehearing.

2. The court held that this was a civil proceeding and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding which was beyond the court's power and jurisdiction. The court thereby takes from respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the 14th amendment to the Constitution of the United States.

3. The judgment of ouster is also an exercise of power by way of original jurisdiction in a criminal cause, in view of the forfeiture and penalties imposed by section 8972 (Revised Statutes 1899) and sections 8969 and 8975 of the Laws of 1907. These sections and the judgment ordered impair the obligation of a contract, take
1019 property without due process of law, abridge the privileges of respondent and fail to accord to it the equal protection of the law, all contrary to the 14th Amendment to the Constitution of the United States and section 10 of article 1 of the said Constitution.

4. Sections 8983, 8984 and 8985 were by this court upheld as constitutional, whereas respondent claimed and still claims that they violate the 14th Amendment to the constitution of the United States in that they deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and also deprive it of its property without due process of law in that there was a threatened penalty of a judgment against it if it did not comply with the order.

5. Sections 8965, 8966, 8967, 8971, 8972 and 8978 were repealed by the Laws of 1907, and after the institution of this suit new sections enacted in lieu thereof. It is true that the new law provides that the penalties incurred under the old law should not be affected. Inasmuch as the legislature cannot constitutionally grant to this court power to impose any forfeiture or fine, the reservation has, and can have, no application to proceedings pending here. Hence, the statutes here enforced (Sections 8965, 8966, 8967, 8971 and 8978) have been repealed and to now enforce the same against respondent is to take its property without due process of law, abridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, contrary to the provisions of the 14th Amendment to the Constitution of the United States.

6. The law as amended (Laws 1907, p. 377, et seq.) forbids an imposition of both a fine and a judgment of ouster or revocation of a license. The penalty is in the alternative. Such would be the relief as against others. Hence, when this court adjudged both a fine and a forfeiture, it denies to respondent the equal protection of the law and takes its property without due process of law, all contrary to the provisions of the 14th Amendment to the Constitution of the United States.

Wherefore said respondent asks that a writ of error be allowed to the Supreme Court of the United States, assigning the foregoing errors.

1020 ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Said Respondent.

Allowed this March 9, 1909.
LEROY B. VALLIANT,
Chief Justice Supreme Court of Missouri.

1021 In the Supreme Court of Missouri.

No. 12988.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General,
vs.
STANDARD OIL COMPANY (OF INDIANA), WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Corporations, Respondents.

Application for Writ of Error.

Now comes the Republic Oil Company, one of the respondents herein, and respectfully represents:

A judgment has been entered in above entitled cause, fining it in the sum of fifty thousand dollars, and ousting it from the right to do business in the state. The court in its judgment erred:

1. In denying to respondent the protection of the constitution of

the United States and amendments thereto in each of the respects claimed in its amended answer and return, and also in its motion for rehearing.

2. The court held that this was a civil proceeding and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding which was beyond the court's power and jurisdiction. The court thereby takes from respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the 14th amendment to the Constitution of the United States.

3. The judgment of ouster is also an exercise of power by way of original jurisdiction in a criminal cause, in view of the forfeiture and penalties imposed by section 8972 (Revised Statutes 1899) and sections 8969 and 8975 of the Laws of 1907. These sections and the judgment ordered impair the obligation of a contract,
1022 take property without due process of law, abridge the privileges of respondent and fail to accord to it the equal protection of the law, all contrary to the 14th Amendment to the Constitution of the United States and section 10 of article 1 of the said Constitution.

4. Sections 8983, 8984 and 8985 were by this court upheld as constitutional, whereas respondent claimed and still claims that they violate the 14th Amendment to the constitution of the United States in that they deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and also deprive it of its property without due process of law in that there was a threatened penalty of a judgment against it if it did not comply with the order.

5. Sections 8965, 8966, 8967, 8971, 8972 and 8978 were repealed by the Laws of 1907, and after the institution of this suit new sections enacted in lieu thereof. It is true that the new law provides that the penalties incurred under the old law should not be affected. Inasmuch as the legislature cannot constitutionally grant to this court power to impose any forfeiture or fine, the reservation has, and can have, no application to proceedings pending here. Hence, the statutes here enforced (Sections 8965, 8966, 8967, 8971 and 8978) have been repealed and to now enforce the same against respondent is to take its property without due process of law, abridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, contrary to the provisions of the 14th Amendment to the Constitution of the United States.

6. The law as amended (Laws 1907, p. 377, et seq.) forbids an imposition of both a fine and a judgment of ouster or revocation of a license. The penalty is in the alternative. Such would be the relief as against others. Hence, when this court adjudged both a fine and a forfeiture, it denies to respondent the equal protection of the law and takes its property without due process of law, all contrary to the provisions of the 14th Amendment to the Constitution of the United States.

Wherefore said respondent asks that a writ of error be allowed to the Supreme Court of the United States, assigning the foregoing errors.

1023 ALFRED D. EDDY,
FRANK HAGERMAN,
Attorney- for Said Respondent.

Allowed this March 9, 1909.
LEROY B. VALLIANT,
Chief Justice Supreme Court of Missouri.

1024 Which said bonds are in words and figures as follows, to-wit:

In the Supreme Court of Missouri, in Banc, October Term, 1908.

No. 12988.

STATE OF MISSOUI on the Information of HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY OF INDIANA, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Bond of Standard Oil Company of Indiana.

Know all men by these presents: That we, Standard Oil Company of Indiana as principal, and Illinois Surety Company as surety, are held and firmly bound in the penal sum of One Hundred Thousand Dollars ($100,000) to be paid to the State of Missouri for the benefit of whom it may concern, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, successors and assigns firmly by these presents.

The condition of this obligation is such that whereas in the above entitled cause a judgment has been rendered ousting the Standard Oil Company of Indiana and the Republic Oil Company from the right to do business in the State of Missouri, and fining each of them in the sum of fifty thousand dollars, and,

Whereas, it is the desire of the Standard Oil Company of Indiana, one of said respondents, to review the judgment and decision of said court in the Supreme Court of the United States, and a writ of error has been prayed for and allowed to that end.

Now therefore, if the said Standard Oil Company of Indiana shall prosecute its writ of error to effect and answer all damages
1025 and costs if it shall fail to make its plea good, then the above obligation to be void, otherwise to be and remain in full force.

In witness whereof, the parties hereto have caused these presents to be signed this 9 day of March, 1909.

[SEAL.] STANDARD OIL COMPANY OF INDIANA,
By FRANK HAGERMAN, *Its Attorney & Agent.*
ILLINOIS SURETY CO.,
By BENNETT W. McCLUER, *Attorney in Fact.*

The foregoing supersedeas bond is hereby approved this 9 day of March, 1909.

LEROY B. VALLIANT,
Chief Justice.

In the Supreme Court of Missouri, in Banc, October Term, 1908.

No. 12988.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, Informant,
vs.
STANDARD OIL COMPANY OF INDIANA, WATERS-PIERCE OIL COMPANY, and REPUBLIC OIL COMPANY, Respondents.

Bond of Republic Oil Company.

Know all men by these presents: That we, Republic Oil Company as principal, and Illinois Surety Company as surety, are held and firmly bound in the penal sum of One Hundred Thousand Dollars ($100,000) to be paid to the State of Missouri for the benefit of whom it may concern, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, successors and assigns firmly by these presents.

1026

The condition of this obligation is such that whereas in the above entitled cause a judgment has been rendered ousting the Standard Oil Company of Indiana and the Republic Oil Company from the right to do business in the State of Missouri, and fining each of them in the sum of fifty thousand dollars, and

Whereas, it is the desire of the Republic Oil Company, one of said respondents, to review the judgment and decision of said court in the Supreme Court of the United States, and a writ of error has been prayed for and allowed to that end.

Now therefore, if the said Republic Oil Company shall prosecute its writ of error to effect and answer all damages and costs if it shall fail to make its plea good, then the above obligation to be void, otherwise to be and remain in full force.

In witness whereof, the parties hereto have caused these presents to be signed this 9 day of March, 1909.

[SEAL.] REPUBLIC OIL COMPANY,
By FRANK HAGERMAN,
Its Attorney & Agent.
ILLINOIS SURETY CO.,
By BENNETT W. McCLUER,
Attorney in Fact.

The foregoing supersedeas bond is hereby approved this 9 day of March, 1909.

LEROY B. VALLIANT,
Chief Justice.

1027 And afterwards, to-wit, on the 5th day of April, 1909, the further following proceedings were had in said cause, viz:

STATE ex Inf. ELLIOTT W. MAJOR, Attorney General, Informant,
vs.
STANDARD OIL COMPANY et al., Respondents.

Now at this day, comes the clerk of this court, and upon his application, and for good cause shown, it is ordered by me the undersigned Chief Justice of the Supreme Court of the State of Missouri, that the time for preparing the transcript herein to the Supreme Court of the United States be extended thirty (30) days from and after the 9th day of April, 1909.

LEROY B. VALLIANT,
Chief Justice of the Supreme Court of Missouri.

1028 STATE OF MISSOURI, *ss:*

I, John R. Green, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete copy of the proceedings in the above entitled cause, as requested by the Attorneys, as fully and completely as the same remains on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court hereto affixed. Done at office in the City of Jefferson, this 1st day of May, 1909.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN,
Clerk Supreme Court.

1029 In the Supreme Court of the United States.

STANDARD OIL COMPANY OF INDIANA, Plaintiff in Error,
vs.
THE STATE OF MISSOURI ex Inf. Attorney General, Defendant in Error.

REPUBLIC OIL COMPANY, Plaintiff in Error,
vs.
THE STATE OF MISSOURI ex Inf. Attorney General, Defendant in Error.

Stipulation.

It is hereby stipulated:

1. That Elliott W. Major may be and is hereby substituted as the informant, in above entitled causes, he being the successor to Herbert S. Hadley as Attorney General of the State of Missouri;

2. Inasmuch as the report of the special commissioner is con-

tained in the transcript proper and also set forth in the opinion of the supreme court of the state, the clerk in printing the record may omit printing that report so far as it is contained in said opinion, so as to avoid duplication.

FRANK HAGERMAN,
Attorney for Plaintiff in Error.
ELLIOTT W. MAJOR,
Attorney for Defendant in Error.

[Endorsed:] 452/21665. 453/21666.

1030 [Endorsed:] File Nos. 21,665 & 21,666. Supreme Court U. S., October Term, 1909. Term Nos. 452 & 453. Standard Oil Co. of Indiana, Pl'ff in Error, vs. The State of Missouri, ex inf. Herbert S. Hadley, Att'y Gen. Republic Oil Company, Pl'ff in Error, vs. The State of Missouri, ex inf. Herbert S. Hadley, Att'y Gen. Stipulation to substitute Elliott W. Major for Herbert S. Hadley as party defendant in error, and to omit part of record in printing. Filed Sept. 21st, 1909.

Endorsed on cover: File No. 21,665. Missouri Supreme Court. Term No. 218. Standard Oil Company of Indiana, plaintiff in error, vs. The State of Missouri on the information of Herbert S. Hadley, attorney general, succeeded by Elliott W. Major et al. File No. 21,666. Term No. 219. Republic Oil Company, plaintiff in error, vs. The State of Missouri on the information of Herbert S. Hadley, attorney general, succeeded by Elliott W. Major et al. Filed May 13th, 1909. File Nos. 21,665 & 21,666.

FILE COPY.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

Supreme Court, U. S.
FILED
OCT 31 1911
JAMES H. McKENNEY,
Clerk.

STANDARD OIL COMPANY, OF INDIANA,
Plaintiff in Error,

v.

THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR ET AL. — No. 47.

REPUBLIC OIL COMPANY,
Plaintiff in Error,

v.

THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR ET AL. — No. 48.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PLAINTIFF IN ERROR.

ALFRED D. EDDY,
ROBERT W. STEWART,
FRANK HAGERMAN,
Attorneys for Plaintiffs in Error

John C. Rowell, Printer, 720 Dearborn Ave., Kansas City, Mo.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

STANDARD OIL COMPANY, OF INDIANA,
Plaintiff in Error.
v.
THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR ET AL. — No. 47.

REPUBLIC OIL COMPANY,
Plaintiff in Error,
v.
THE STATE OF MISSOURI ON THE INFORMATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, SUCCEEDED BY ELLIOTT W. MAJOR ET AL. — No. 48.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

1. *The Proceedings.*

These proceedings in error, upon behalf of the Standard Oil Company of Indiana and the Republic Oil Company, seek to reverse the judgment (Rec., 337-340) of the Supreme Court of

Missouri (Opinions, 218 Mo., 1-507; Rec., 340-444) in *quo warranto,* rendered in an original civil proceeding therein, not only unconditionally ousting them from the state, but also imposing upon each a fine of $50,000.

2. *Information.*

Original jurisdiction in *quo warranto* is by the constitution of the state (Art. 6, sec. 3) vested in the Supreme Court thereof. That action has, as was below decided, always, in Missouri, been regarded as a civil proceeding. It was instituted by the Attorney General filing an information (Rec., 6-10) in form civil, not criminal, against the Waters-Pierce Oil Company, a corporation organized under the laws of that state, the Standard Oil Company of Indiana, and the Republic Oil Company of New York, both the latter two having been authorized pursuant to the statute (Rev. Sts. Mo., Secs. 1024, 1025) to do business in Missouri, for the remainder of their chartered existence as fully as if they had been domestic corporations. The gravamen of the complaint was that the respondents had, in violation of the state law, entered into an illegal trust, pool and combination to fix and maintain the prices of the products of petroleum; the sole relief asked (Rec. 10) was that they be ousted from the exercise of their corporate rights and privileges under the laws of the state, and their licenses to do business therein be forfeited; nothing further was asked and no mention was made of a claim for a fine or other penalty.

3. *Answers.*

The answer of the Waters-Pierce Company (Rec., 27) was a general denial. That of the Standard Oil Company (Rec., 11-18) as well as that of the Republic Oil Company (Rec., 19-26)

consisted of: (a) specific denials of the averments of the information; (b) averments that certain sections of the state anti-trust statutes, sought to be enforced, were violative of certain provisions of the state and, in the respects hereinafter mentioned, of the federal constitution; and (c) that the action was an attempt to enforce the criminal features of that statute by original civil proceedings in the Supreme Court in violation of the fourteenth amendment, in that, if done, there would be accorded neither due process nor the equal protection of the law.

4. *Motion to strike.*

The state filed motions (Rec., 28-31) to strike from the answers the special matters pleaded therein. These motions and such special matters were, by stipulation (Rec., 32) withdrawn, without prejudice to thereafter assert the same. The answers were, however, thereafter permitted (Rec., 107) to be amended and such special matters were again (Rec., 108-123) pleaded exactly as they originally appeared.

5. *Orders appointing a commissioner to hear case.*

An order (Rec., 32) was made appointing Honorable Robert A. Anthony as commissioner to take the evidence and find the facts. It was evidently entered upon the theory that the case was civil in its nature, because in criminal cases the state constitution (Art. 2, Sec. 22) requires a trial by jury, and gave the defendant the right to meet the witnesses face to face. This order was afterwards amended (Rec., 124) by directing the commissioner not only to find the facts, but to report his conclusions of law and fixing the time within which exceptions to his report should be filed, whereby he practically became the same as a special

master in an equity case. Indeed he evidently was treated as one because Judge Woodson's opinion below referred to his report and its contents as "the incoming report of the master" (218 Mo., 339; Rec., 358), "the report of the master" (218 Mo., 462; Rec., 435) and "the conclusions reached by the master" (id).

6. *State's motion for production of witnesses.*

The state, obtained an *ex parte* order (Rec., 81-83) that the Republic Oil Company produce within Missouri, certain officers, books and papers, under a statute (Rev. Stat. of Mo., 1899, Sec. 8983-8984) which provided that for a failure so to do in a suit to enforce the anti-trust statute, but in no other, final judgment should be entered against the corporation. A motion (Rec., 84-85) was made to set aside the order because such a statute did not accord to the respondent due process or the equal protection of the law. In an elaborate opinion (194 Mo., 124; Rec., 77-101) the court below upheld the validity of the statute. Upon its hearing it appeared (Rec., 72-76) that depositions were being taken in New York which could not have been done had the case been criminal because respondents were entitled at the trial to be confronted by the witnesses against them (Const. Mo., Art. 6, Sec. 3). A motion for a rehearing (Rec., 103-105) was filed and (Rec., 105) overruled, after which a new order (Rec., 106-107) was made for the production of certain non-resident officers.

The contention of the company was that under *Hovey* v. *Elliott*, 167 U. S., 409, no state statute could be upheld which permitted judgment to be entered if the party failed to appear or answer and that such a statute could not single out and apply to one class of cases, and to none other. Since then, however, *Hammond Packing Co.* v. *Arkansas*, 212 U. S., 322, has been decided, upholding such legislation as against a foreign corporation. That

decision as well as the fact that there was, thereafter, a compliance with the order, probably eliminates from the case that which might otherwise have been here, as it was below, a serious and interesting question.

7. *Report of Commissioner and exceptions thereto.*

An elaborate report (Rec., 124-309) was filed by the commissioner, finding the respondents guilty. To this report each one of the respondents, in due time, filed exceptions (Rec., 309-335).

8. *Federal constitutional questions invoked and decided.*

(a) The answers of the Republic (Rec., 112-115) and of the Standard Oil companies (Rec. 120-123) presented these federal constitutional questions:

1st. The anti-trust statute prohibited the making of all arrangements restricting competition, whether reasonably, unreasonably, directly or indirectly restraining same, which was an unwarrantable interference with the constitutional right of all persons to make contracts.

2nd. That statute discriminated between the sellers and the purchasers of commodities, in that it applied only to those who made or sold commodities, but not to those who bought from them. It also discriminated between labor, capital and other interests on the one hand and the seller of commodities upon the other, in that it applied to the sale of commodities and to insurance premiums, but not to labor or other things which could be made the subject of a pool or combination.

3rd. That statute attempted to regulate interstate commerce in that it prevented contracts as to commodities used therein.

4th. Section 8972 impaired the contract made by permitting the Standard Oil Company to enter the state, interfered with the right of respondents to make contracts and denied the equal protection of the law in the attempt thereby to prevent, in case of ouster, any one from dealing in, within the state, *any* commodity, state or interstate, made by an ousted corporation, its successors or assigns, no such result being possible in the case of a partnership or individual engaged in the same business and found guilty of exactly the same offense.

5th. Sections 8983 and 8984 did not accord due process in requiring, under a penalty of a judgment for non-compliance, the production of its officers, books and papers within the state.

6th. The criminal features of the anti-trust statute were sought to be enforced in an original civil proceeding, in the court below, which could not take original jurisdiction in criminal cases, whereby there was accorded neither due process because there was no jurisdiction, nor the equal protection of the law in that co-partnerships and individuals doing the same business and guilty of the same offense could not be so proceeded against.

(b) These questions were again presented by requests (Rec., 293-295) to give certain declarations of law which were (Rec., 293), by the commissioner refused, again by exceptions to the report (Rec., 310-311; 320-321) and finally by petition for rehearing (Rec., 445-448, 451-452). The commissioner (Rec., 299-300) and the court (Rec., 375-387; 218 Mo., 1, 368-385) both fully considered and decided these questions against the respondents.

9. *Opinions and judgment of the court below.*

Upon the hearing, all exceptions were overruled in an elaborate opinion (218 Mo., 1-469; Rec., 340-437) by Judge Woodson. A concurring opinion (218 Mo., 470-473; Rec., 439-442) was filed by Judge Graves and a dissent (218 Mo., 474-478; Rec., 442-444) by Judge Lamm.

(a) The opinion of Judge Woodson was: The report of the commissioner should, upon the same reasoning and grounds stated in *U. S.* v. *Standard Oil Co.*, 173 Fed. Rep., 177; 221 U. S., 1, be confirmed as it clearly showed the respondents to be guilty; each of them should be fined $50,000 and ousted from the state, but the ouster against the Waters-Pierce Company should be suspended if, before a day fixed, it paid its fine and satisfactorily showed that it had ceased all connection with the other respondents. Judge Graves thought the punishment as to the Republic and Standard Companies was not sufficient, and that a substantial sum should be added as a fine, and that the judgment against the Waters-Pierce Company was excessive. It is, however, from the statements therein manifest that he wrote *his opinion* at a time when the majority of the court had concluded to simply oust all respondents but to impose no fines. Judge Lamm was of the opinion that the fine of the Waters-Pierce Company should be increased to $1,000,000, and that of the Standard Oil Company increased to an amount not named. He was, however, of opinion that the latter should not be ousted from the state.

(b) The report of the commissioner appeared (218 Mo., 65-339, Rec., 358) *in haec verba*, in Judge Woodson's opinion. It consisted of over 185 printed pages, and is set forth (Rec., 124-309) at one place in the record. So, in accordance with stipulation (Rec., 484-485) it was not reprinted as part of the opinion.

(c) Judgment (Rec., 337) was rendered against the Republic and Standard Oil companies, *first*, forfeiting, annulling and canceling their licenses to do business as foreign corporations and ousting them from all rights to further do business in the state, and, *second*, fining each of them $50,000. The same fine was imposed against the Waters-Pierce Company, but the ouster as against it was suspended if before a day fixed it paid its fine and ceased all connection with the other respondents, which conditions it accepted by resolutions (Rec., 457-458) of its directors and tendered to the court (Rec., 478) the amount of its fine.

The Attorney General thereafter, not being satisfied with the evidence offered as to this compliance with the judgment, moved (Rec., 459) to make the ouster absolute. The court, however, (Rec., 459, 478) overruled the motion, over the dissent of Judges Woodson and Lamm, approved (Rec., 478) the acceptance filed as a compliance with the decree and accepted the tender of the fine, thus taking the Waters-Pierce Company out of the case. Judge Woodson filed a separate opinion (Rec., 460-468) in support of his dissent but no other judge concurred therein.

10. *Petitions for rehearing.*

The Standard (Rec., 444-451) and Republic (Rec.,451-452) companies filed petitions for rehearing which were (Rec., 459) overruled, Judges Woodson and Lamm dissenting, although they specifically re-asserted the constitutional questions theretofore presented and others which, in form though not in substance, arose for the first time by the entry of the judgment of ouster, the sole relief asked, accompanied by fines in substantial sums.

11. *Retirement from the state of the Republic Oil Company.*

The report of the commissioner was filed (Rec., 124) upon May 24, 1907. Thereafter, upon June 22, 1907, before the cause was heard by the court, the Republic Oil Company filed (Rec., 336) with the secretary of state a statutory (Rev. Stat. Mo., 1899, sec. 1018) withdrawal from the state. The secretary received the paper but did not actually mark it filed because, as he certified, he desired the advice of the attorney general as to whether, in view of the litigation, it should be permitted to be formally filed. Prior to the hearing, (Rec., 335) which was (Rec., 337) upon October 23, 1907, a certified copy (Rec., 336-337) was filed with the court as a suggestion to it in abatement of the cause. It was, after a long discussion (218 Mo., 385-393, Rec., 387-392) held to be properly and in accordance with the practice, called to the attention of the court. It was also held that while it practically gave the state the entire relief for which the information asked so far as ouster was concerned, yet it did not prevent the court from also imposing a fine, for which purpose jurisdiction could be retained. This, the company claims, was an exercise of a power which only exists in a criminal case but never in a civil proceeding, and being directly contrary to the state constitutional and statutory provisions, vesting jurisdiction, it was thereby denied due process and the equal protection of the law accorded by the fourteenth amendment to the constitution.

12. *The anti-trust statute.*

(a) The violation of law found to exist was by the judgment (Rec., 337) expressly recited to be the acts of the state legislature approved March 24, 1877 (Laws of Mo. 1877), and April 2, 1891 (Laws of Missouri, 1891, p. 186) as embodied in Chapter 143 of the Revised Statutes of 1899 (Rev. Stat. Mo., 1899, Secs. 8965-8982). The reference to the act of 1877 was evidently a

mistake as the first anti-trust act was passed in 1889 (Laws Mo. 1889, p. 96; Rev. Stat. Mo. 1889, secs. 7319-7326).

These statutes as construed provided that:

There should be no combination or agreement by manufacturers, buyers or sellers to regulate or fix the price or limit the amount or quantity of articles of manufacture or merchandise or commodity or by insurance companies to fix the price of insurance (Sec., 8965-8978) and none such made tending to lessen full and free competition therein (Sec., 8966).

For a violation thereof there could be injunction in the lower state courts (Sec., 8979), a recovery therein of treble damages (Sec. 8981) by the party injured, the imposition in criminal prosecutions therein by the state of a fine of from $5.00 to $100.00 for each day's offense (Sec. 8968) while the trust continued and if the offender were a corporation, there could be a judgment of ouster by "*any* court of competent jurisdiction" (Sec. 8971).

The acts of March 19 and 20, 1907, (Laws of Mo. 1907, pp. 374-376; 377-382) repealed these provisions of the statute and enacted, in lieu thereof, new sections making provision, however, that the penalties theretofore accruing *under* the former law should not be affected thereby.

(b) The statutes of Missouri (Rev. Stat. 1899, Secs. 1024-1025) adopted from the acts of 1891 (Laws of Mo. 1891, p. 75) as amended in 1895 (Laws of Mo. 1895, p. 85), also provided that a foreign corporation, by filing a certified copy of its articles of incorporation and paying a certain tax upon its capital stock, could obtain a certificate to do business therein for the remainder of its corporate existence (Sec., 1025) if not in excess of the time for which life could be given to a domestic company. Upon obtaining such certificate such foreign corporation became subjected to all the liabilities, restrictions and duties imposed upon

domestic corporations of like character but could in the state exercise no greater powers (Sec. 1024). The Standard Oil Company was, under this law, admitted to Missouri (Report Rec., 269) upon January 21, 1897, while the license to the Republic Oil Company (Rec., 267) was granted July 8, 1901.

(c) The Act of March 24, 1897, (Laws of Mo. 1897, p. 208) amended the anti-trust laws of 1889 and 1891 by adding section 8972 (Rev. Sts. Mo. 1899) providing that in case there was a judgment of ouster against a corporation, then that no other person whatsoever could, in the state, sell, offer to sell or deal in, any article or commodity, made, produced and manufactured in whole or in part by that corporation. The section also expressly recited that such provisions were "hereby made applicable in all respects to the successors or assigns of any corporation" so ousted. The literal reading thereof was that if there be a judgment of ouster, that no person could, within the state, sell or deal in any commodity made by the ousted company or any one to whom it sold its plant. This is confiscation, nothing more, nothing less. Applied to an oil refinery, which can be used for no other purpose and, to the Standard Oil, it means much; for besides having been admitted to the state *prior* to the passage of the act, the undisputed evidence set forth in the commissioners' report (Moffett Report, Rec., 240-244; Crenshaw id., 254) showed that company had large investments in the state, the extent of which was forcibly described by Judge Lamm (218 Mo., 474-476; Rec., 442). Judge Woodson (218 Mo., 506; Rec., 445) enlarged upon the subject by saying that the company had from 1900 to 1907, after deducting six per cent annual interest upon its investment, made from its state business in Missouri, net profits in excess of $1,000,000. It clearly appeared (Report Rec., 241, 244, 254), that besides an investment in one large refinery of $1,250,000, the daily production of which was 1000 to 1200 barrels,

there were many costly marketing plants in the state from which there were annually marketed 8,500,000 gallons of oil. The unconstitutionality of this section was asserted below and the question will hereafter receive due consideration.

13. *Laws of Missouri as to Quo Warranto.*

(a) Quo warranto is a proceeding of which the Supreme Court of the state has original jurisdiction the state constitution (Art. 6, Sec. 3), providing that in addition to its appellate jurisdiction, it has power "to issue writs of habeas corpus, mandamus, quo warranto, certiorari and other remedial writs and to hear and determine the same." It was, however, below expressly held to be a civil proceeding (Opinion, Rec., 361, 362, 367, 375; 218 Mo., 1, 334, 345, 353) in accordance with previous decisions. (*State ex inf.* v. *Vallins*, 140 Mo., 523, 525, 536; *State ex inf.* v. *Loan Co.*, 142 Mo., 325, 335, 336.)

(b) The court below not only so held but that tribunal, as well as the parties, during the course of the case, treated it as civil, not criminal, in at least three material ways: Thus, the information (Rec., 5-10) and process (Rec., 4-5) ordered and issued therein were civil in form, not criminal. So a commissioner was appointed to find the facts and state his conclusions of law as to the entire case (Rec., 32, 124) and depositions were taken (Rec., 71-76) in New York upon behalf of the state, whereas the state constitution (Art. 2, Sec. 12), required a criminal proceeding to be by a criminal indictment or information, the trial to be by jury and the defendant to be confronted by the witnesses at the trial.

(c) Section 539, (Rev. Stat. of Mo., 1899), provides that in other than criminal cases, there shall be but one form of action known as a civil action, Sections 4457-4462 provide for

proceedings in quo warranto in the circuit or nisi prius court but they have no relation to original proceedings in the Supreme Court (Opinion, Rec., 374, 218 Mo., 365).

(d) While at common law there was power to fine, yet the fine there was only nominal (*Ames* v. *Kansas*, 111 U. S., 449, 461). In Missouri, the statute (Rev. Stat., 1899, sections 4151, 4152), while continuing in force the common law expressly provides for the rejection of so much thereof as permitted any imposition of a fine in excess of $200, so that if at common law there was power, as in fact there was not, in any such proceeding to impose a fine of $50,000, such law never became effective in Missouri.

(e) The statute (Rev. Stat. Missouri, 1899, Sec. 2396) of the state defines a crime to be "*any* offense * * * for which punishment or fine or both may by law be inflicted." So that the court below in fining punished criminally.

14. *Disposition below of the federal questions involved.*

The commissioner (Rec., 299) and the court below (218 Mo., 368-385, Rec., 375-387), as to the federal constitutional questions, held:

(a) While the state anti-trust act in terms prohibited *all* contracts by certain persons, in restraint of trade, yet as was held here of the Sherman Act (*Standard Oil Co.* v. *U. S.*, 221, U. S., 1) it did not extend to reasonable arrangements not directly influencing competition. This construction of the statute, binding here, necessarily removes from the case (*Smiley* v. *Kansas*, 196 U. S., 447) the first objection below, that the statute unreasonably interfered with the right to contract.

(b) The different sections of the statute must be considered as a whole. When this was done, both buyers and sellers are within its prohibition. This construction, also binding here, removes from the case the question that there was an unreasonable discrimination as between buyers and sellers.

(c) The statute reached all persons making, buying or selling commodities, as well as those dealing in insurance premiums. It did not, however, prohibit agreements relating to labor which might as effectually restrain or restrict competition. This, however, was not an unreasonable discrimination but was justifiable classification, not express, but implied from omission.

(d) The statute could not constitutionally regulate interstate commerce therefore must be considered not to have done so. This should have put that question out of the case. The judgment was not, however, so restricted, and being for an unconditional ouster brought into effect Section 8972, preventing the sale in the state by the ousted corporation, its successor or assign, of any commodity made by either; this even though the article sold was one in interstate commerce.

(e) Section 8972, of that statute did not unreasonably impair or destroy contractual or property rights. The question, however, was only dealt with in glittering generalities, ignoring the specific objections made by the respondents.

(f) Sections 8983 and 8984 did not deny due process in requiring the production within the state of its officers, books and papers, a question since likewise decided here (*Hammond Packing Co.* v. *Arkansas*, 212 U. S., 322).

(g) The statutory criminal penalties of the anti-trust act were not sought to and could not be enforced in a civil proceeding. The court below, by constitution, was vested with original common

law jurisdiction, in a *civil* action only, to wrest by ouster, from any corporation violating any state law, the franchise given by the state and thus abused by the offender. The court, however, in addition to ousting, could, by virtue of the common law, in a *civil* case, also fine respondents in substantial sums. When the fine was thus imposed, it was not the exercise of any criminal power, no matter how large the amount, nor was it the enforcement of any fine or penalty provided for by the statute for its violation.

15 *Questions here involved.*

The Republic and Standard Companies bring the case here, by writs of error, claiming that the Supreme Court of Missouri erred in rendering judgment of ouster against each of them and at the same time imposing upon each of them a fine of $50,000. In that connection these questions arise and will be presented:

(a) The case was civil, not criminal; yet the court below in an exercise of original, not appellate, civil jurisdiction, entered a judgment of ouster, the sole relief claimed in the information, thereby exhausting its power in such an action, this too, after a repeal of the statute, a violation of which was the basis of the judgment. In addition thereto, it imposed a fine of $50,000. To thus fine was the exercise against a corporation of a power in a criminal action which, as was conceded, could not have been exercised against a partnership or individual. The court, as it conceded, was not vested with and could not entertain original criminal jurisdiction, wherefore there was accorded neither due process nor the equal protection of the law (Argument, Div., 1).

(b) The effect given to the judgment of ouster in Missouri by section 8972 (Rev. Stats. Mo., 1899), passed after the Standard Oil Company entered the state, and sections 8969 and 8975 (Laws Mo., 1907, pp. 379-380), was violative of the constitution in that no

one, not even a retail merchant, could, in the state, ever sell o
deal in any article, in state or interstate commerce, made by th
ousted company or one to whom it sold its plant (Argument Div
II).

(c) The judgment of ouster fails to exclude from its effe
interstate business, thus directly affecting interstate commer
which congress alone (Const. U. S., Art. 1., Sec. 8) can regulat
Moreover, under the literal terms of section 8972, after a corpor
tion is ousted, no person can in the state deal in *anything*, not eve
an article of interstate commerce, manufactured by it, its su
cessors or assigns, so that in this respect particularly, a gener
ouster interferes with interstate commerce (Argument Div. III

(d) The statute, because of a violation of which there w
an ouster, was before trial repealed, whereby there was no juri
diction and hence no due process of law (Argument Div. IV).

(e) The Republic Oil Company had, prior to the heari
below, withdrawn from the state. The court below conceded th
it could only exercise original jurisdiction in quo warranto a
that it had no power to enforce any criminal law. The office h
expired so there was nothing upon which the judgment of ous
could operate. The withdrawal of the company from the st
deprived the latter of nothing in the way of rights, unless a fi
could be, in the same proceeding, imposed (Argument Div.
subd. i).

(f) If there should be no absolute reversal of the jud
ment below, but some change therein, then this court shou
exercise its statutory power by making such modification
would do justice and yet conform to the decree entered in *Uni
States* v. *Standard Oil Company*, 173 Fed. Rep., 177, 221 U.
1, thus preventing, as to one vast property in a state, conflicti
directions from courts of different jurisdiction (Argument D
I, Subd. a-h).

SPECIFICATION OF ERRORS.

The questions thus arising are involved in the assignments of error (Rec., 479-481), but probably put them in more concrete form than they there appeared where they asserted that the court below erred:

"1. In denying to respondent the protection of the constitution of the United States and amendments thereto in each of the respects claimed in its amended answer and return, and also in its motion for rehearing.

2. The court held that this was a civil proceeding and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding which was beyond the court's power and jurisdiction. The court thereby takes from respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the 14th amendment to the constitution of the United States.

3. The judgment of ouster is also an exercise of power by way of original jurisdiction in a criminal cause in view of the forfeiture and penalties imposed by section 8972 (Revised Statutes, 1899) and sections 8969 and 8975 of the Laws of 1907. These sections and the judgment ordered impair the obligation of a contract, take property without due process of law, abridge the privileges of respondent and fail to accord to it the equal protection of the law, all contrary to the 14th amendment to the constitution of the United States and section 10 of article 1 of the said constitution.

4. Sections 8983, 8984 and 8985 were by this court upheld as constitutional, whereas respondent claimed and still claims that they violate the 14th amendment to the constitution of the United States in that they deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and also deprive it of its property with-

out due process of law in that there was a threatened penalty of a judgment against it if it did not comply with the order.

5. Sections 8965, 8966, 8967, 8971, 8972 and 8978 were repealed by the laws of 1907, and after the institution of this suit new sections enacted in lieu thereof. It is true that the new law provides that the penalties incurred under the old law should not be affected. Inasmuch as the legislature cannot constitutionally grant to this court power to impose any forfeiture or fine, the reservation has, and can have, no application to proceedings pending here. Hence the statutes here enforced (Sections 8965, 8966, 8967, 8971 and 8978) have been repealed and to now enforce the same against respondent is to take its property without due process of law, abridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, contrary to the provisions of the 14th amendment to the constitution of the United States.

6. The law as amended (Laws 1907, p. 377, et seq.) forbids an imposition of both a fine and a judgment of ouster or revocation of a license . The penalty is in the alternative. Such would be the relief as against others. Hence, when this court adjudged both a fine and a forfeiture, it denies to respondent the equal protection of the law and takes its property without due process of law, all contrary to the provisions of the 14th amendment to the constitution of the United States."

BRIEF OF ARGUMENT.

I.

A judgment of ouster, coupled with a fine of $50,000, did not accord due process or the equal protection of the law.

(a) *The cases below were civil, as distinguished from criminal.*

(1) The Constitution of Missouri, (Art. 6, Secs. 2, 3, 22, 31), provides:

"Sec. 2. The Supreme Court, except in cases otherwise directed by the Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under the restrictions and limitations in this Constitution provided.

Sec. 3. The Supreme Court shall have a general superintending control over all inferior courts. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari and other original remedial writs, and to hear and determine the same.

Sec. 22. The circuit court shall have jurisdiction over all criminal cases not otherwise provided for by law; exclusive original jurisdiction in all civil cases not otherwise provided for; and such concurrent jurisdiction with and appellate jurisdiction from inferior tribunals and justices of the peace as is or may be provided by law. It shall hold its terms at such times and places in each county as may be by law directed; but at least two terms shall be held every year in each county.

Sec. 31. The General Assembly shall have no power to establish criminal courts, except in counties having a population exceeding fifty thousand."

(2) Under these provisions, it has been decided in Missouri that the jurisdiction of the Supreme Court in quo warranto is original, civil, as distinguished from criminal, and there is no criminal jurisdiction except such as is appellate. Upon this subject, the court below (218 Mo., 1, 344-345; opinion, Rec., 361, 362, 367, 375) spoke in no uncertain terms, emphasizing the rule previously recognized. (*State ex. inf.* v. *Vallins*, 140 Mo., 523, 535, 536; *State ex. inf.* v. *Loan Company*, 142 Mo., 325, 335, 336.) This doctrine accords with the decision here in *Ames* v. *Kansas*, 111 U. S., 449, 461, where there was an extended review of the entire subject under similar constitutional provisions and a like conclusion reached. This accords with section 539 (Rev. Sts. Mo., 1899) which provides:

> "Sec. 539. There shall be in this state but one form of action for the enforcement or protection of private rights, and redress or prevention of private wrongs, which shall be denominated a civil action; and the party thereto complaining shall be known as the plaintiff, and the adverse party as the defendant."

This section is part of the *civil* code which applies to quo warranto proceedings in the supreme court (*State ex inf. v. Vallins*, 142 Mo., 325, 335).

(3) The grant of jurisdiction being constitutional, the court below also held: Quo warranto lies as at common law to oust a corporation from its franchises for an abuse thereof; these actions were not and could not be to enforce any penalty given by the anti-trust statute, because the judgment was contrary to and in the face thereof and by a court not thereby authorized to act; the proceedings were simply to oust defendants from exercising their franchises to do business in the state, because, by a willful violation of the anti-trust statute, they had shown themselves unworthy of exercising the statutory privileges granted to them. No other

relief was asked by the pleader, the prayer therefor (Information, Rec., 10) being simply this:

> "Wherefore, your informant, prosecuting in this behalf for the State of Missouri, prays that the respondents, corporations, and each of them severally, be excluded from all corporate rights and privileges under the laws of the State of Missouri, and that their franchises, rights, authority, license and certificate to do business under the laws of the State of Missouri be declared forfeited, and that each and all of them be ousted from their several corporate franchises, privileges, license and authority to do business under the laws of this state."

It is, therefore, not too much to say that the informant neither asked nor expected a judgment of ouster and also a fine.

(b) *The cases, until judgment, proceeded upon the theory that they were wholly civil in their nature and no suggestion at any time was made by any one that the respondents could be fined.*

The state constitution, (Art. 2, Sec. 12) provided:

> "Sec 12. That no person shall, for felony, be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; in all other cases, offenses shall be prosecuted criminally by indictment or information as concurrent remedies."

Hence, when a judgment was finally rendered against each respondent for an ouster and also for a fine of $50,000, there was a clear attempt to exercise the criminal power of a court of justice; this too by a court which had no *original criminal* jurisdiction in a proceeding *civil* in its nature, and upon an information which asked no relief of a criminal nature and none in the way of an imposition of a fine. Section 2396 (Rev. Sts. Mo., 1899) provides:

> "Sec. 2396. The terms 'crime,' 'offense,' and 'criminal offense,' when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted."

This statutory definition made the proceeding criminal. Besides it was in *Kansas City* v. *Clark*, 68 Mo., 588, said that "a crime is an act committed in violation of public law, (4 Black. Com. 5), a law co-extentive with the boundaries of the state which enacts it." So here (*Kentucky* v. *Denison*, 24 How., 66), it was said that "the word 'crime' of itself includes every offense from the highest to the lowest grade of offenses, and includes what are called misdemeanors as well as treason and felony."

(c) *The power to fine in a substantial sum did not exist at common law. Neither state statute nor constitution authorized it.*

The power of the Supreme Court of the state to fine in a *substantial* sum, while at the same time ousting the defendant from the exercise of its franchises, never existed by virtue of any state statute, nor by any provision in the state constitution. The anti-trust statute in force when the offense was committed (Rev. Sts. Mo., 1899, Sec. 8971) provided:

> "Sec. 8971. Any corporation created or organized by or under the laws of this state, which shall violate any provisions of the preceding sections of this article, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this article, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its right and privilege to do business in this state shall be

declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as the agent of such foreign corporation in transacting its business in this state has been, while acting as such agent, and in the name, behalf or interest of such foreign corporation, violating any provision of the preceding sections of this article, shall be received as *prima facie* proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation. (Laws 1891, p. 186, amended, Laws 1895, p. 237.)"

This was repealed and a new section passed prior to the trial below (Laws of Mo., 1907, pp. 379, 380, Sec. 8971) which gave the power to the circuit court in the alternative. It could not do both for that section provided:

"Any corporation created or organized by or under the laws of this state which shall violate any of the provisions of this act may, upon proper proof being made thereof in any court of competent jurisdiction in this state, be declared by the court to have forfeited its corporate rights and franchises, and the same may by the court be declared forfeited, void and of non-effect, and shall thereupon cease and determine; and such court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, *or in lieu of the forfeiture* of its corporate rights and franchises, *or in lieu of the forfeiture* of all or any part of the property of such corporation, assess against it a fine; and any corporation created or organized by or under the laws of any other state or country which shall violate any of the provisions of this act shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be declared by the court to have forfeited its right and privilege thereafter to do any business in this state, and the same shall by the court be declared forfeited, void and of non-effect, and shall thereupon cease and determine; and such court may, by judgment and decree, also declare all or any part of the property in this state of such corporation forfeited unto the state, or in lieu of the for-

feiture of its right and privilege to do business in this state, or in lieu of the forfeiture of all or any part of the property of such corporation, assess against it a fine; and in all proceedings for the violation of any of the provisions of this act against any corporation created or organized under the laws of this or any other state or country, proof of the act of any person who has been acting as the agent of such corporation in transacting its business in this state in the name, behalf or interest of such corporation shall be received as *prima facie* proof of the acts of the corporation itself; and it shall be the duty of the clerk of the court in which any judgment of forfeiture shall be rendered, as herein provided for, to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation; and in case any court shall render a decree forfeiting all or any part of the property of any corporation violating the provisions of this act, such court shall also appoint a receiver thereof to dispose of the same in such manner as the court may direct, and the net proceeds arising from the sale thereof shall be paid into the state treasury, as shall all fines that may be imposed against any person or corporation violating the provisions of this act be paid into the state treasury."

Theretofore the power to impose a fine had been exercised (*State ex rel.* v. *Armour Packing Co.*, 173 Mo., 356, 393) only as an incident to the judgment of ouster, i. e., the ouster was adjudged unless, as in the case of a remittitur of excessive damages, the defendant *voluntarily* elected to pay a sum of money called a fine. If the fine was not paid, it was neither due nor collectible, but the defendant was ousted of its franchises. In *State ex inf.* v. *Delmar Jockey Club*, 200 Mo., 34, 69, 74, Judge Graves, without authority to support him, attempted to demonstrate that the court could in quo warranto, without statutory authority, both fine and oust; but four of the seven judges refused (p. 77) to concur in this view, so an absolute judgment of ouster was entered, instead of an ouster and fine which was favored by

Judge Graves. It was upon the authority of that case, that the power to fine was in these cases assumed.

At common law, no fine in a *substantial* sum could be imposed. This was here said in *Ames* v. *Kansas,* 111 U. S., 449, 461. So the common law writers have expressed themselves. (3 Black. Com., 263; *The King* v. *Francis,* 2 T. R., 484; Bac. Ab., Title Information D; 2 Kyd on Corporations, 439.)

In Missouri the common law so far as it authorized a fine in any case in excess of $200 was never adopted, for sections 4151 and 4152 (Rev. Sts., 1899) provide:

> "Sec. 4151. The common law of England, and all statutes and acts of parliament made prior to the fourth year of the reign of James the First, and which are of a general nature, not local to that kingdom, which common law and statutes are not repugnant to or inconsistent with the constitution of the United States, the constitution of this state, or the statute laws in force for the time being, shall be the rule of action and decision in this state, any law, custom or usage to the contrary notwithstanding.
>
> Sec. 4152. Punishment by virtue of the common law shall in nowise be other than by fine or imprisonment, or both, and such fine shall not exceed one hundred dollars, and the term of such imprisonment shall not exceed two months; nor shall any of the British statutes for the punishment of crimes and misdemeanors be in force in this state."

It follows, therefore, that there was no power, by constitution, or statute or at common law, in the court below, to enter an absolute judgment of ouster, the sole and entire relief asked, and then add to it a criminal fine of $50,000.

(d) *The power not existing to both oust and substantially fine, the exercise thereof was not due process of law.*

The fourteenth amendment accords to the defendant the right to due process and the equal protection of the law. The respondents had paid the statutory tax upon their capital and were granted the right to do business in Missouri for the remainder of their corporate existence (Rev. Stat. Mo., 1899, secs. 1024.

1025), the same as if they were domestic corporations. To treat them, in a civil suit, *asking no such relief*, as criminals and fine each of them $50,000, by an exercise of original criminal jurisdiction, upon the court's own suggestion, after the submission of the case and when the judgment was entered, was not due process of law, because at the threshold to that protection is the question of jurisdiction. If that does not exist, there is no due process and so this court has repeatedly said (*Twining* v. *New Jersey*, 211 U. S., 78, 111; *Scott* v. *McNeal*, 154 U. S., 34, 46; *Bell* v. *Bell*, 181 U. S., 175, 178; *Andrews* v. *Andrews*, 188 U. S., 14).

So far as concerns the mere judgment of ouster, the equal protection of the law may, in this immediate respect, be said to have been accorded because any corporation could be likewise treated and such a judgment could not be made applicable to individuals. Such also is an appropriate judgment in quo warranto. Not so with a substantial fine of $50,000. There could be no reason for fining a corporation which would not apply to an individual. The fine was not asked for by the state but imposed by the court, upon its own volition, as if the inspiration first came to it when entering judgment seemingly (Rec., 441, 442) being driven thereto by Judge Graves' concurring suggestions. An individual or co-partnership engaged in exactly the same business and guilty of a like violation of law, could not, however, have been so fined in *any* original proceeding in the Supreme Court. Therefore, equal protection in the administration of the law was not accorded. The judgments in both cases are therefore erroneous upon the broad ground that the court below exercised the full limit of its power in a civil proceeding by ousting, the sole relief which the state asked. There was no power to add thereto the criminal punishment of a $50,000 fine, so that each respondent was ousted and at the same time fined in a substantial sum.

(e) The judgment of the court below did not therefore accord the equal protection of the law, because when rendered it was for both ouster and fine. This equal protection was not accorded for another reason. With other corporations proceeded against in the circuit court, for exactly the same offense, the judgment could only be in the alternative for while, as has just been contended, the mere coupling of the ouster with the fine failed to accord due process of law, still the failure becomes more pointed and apparent when the act of March 19, 1907 (Laws of Mo., 1907, pp. 379, 380, sec. 8971), is considered. That section was in force at the time of the decision below and has already been quoted. The power to oust and fine was in the alternative; both could not be exercised; the fine could only be imposed in lieu of an ouster. This section applies alone to *any* court though it will probably be contended that it is limited to proceedings in the circuit court, under the view below (*State ex inf.* v. *Loan Company*, 142 Mo., 329; opinion below, Rec., 362, 365, 366; 218 Mo., 349, 350) that all other penal provisions of the anti-trust statute must be treated as cumulative to the constitutional original civil jurisdiction of the Supreme Court. If that be the construction then the result is that a corporation abusing its franchise by a violation of the anti-trust statute, if proceeded against as here, in the Supreme Court, could be subjected to a judgment of ouster and the imposition of a heavy fine, so substantial, that at least two of the judges there, Lamm (Rec., 444) and Woodson (Rec., 477) each suggested making it $1,000,000; whereas if the proceeding had been under the statute, in the circuit court the judgment must have been in the alternative,—an ouster *or* a fine. Thus, corporations situated alike, for exactly the same offense, are treated differently, dependent upon which court takes jurisdiction, so that the equal protection of the law is not accorded.

(f) The discrimination in these respects is as pointed as that existing in the cases heretofore here decided. (*Gulf, etc.* v.

Ellis, 165 U. S., 150, 154; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S., 79; *Connelly* v. *Union Sewer Pipe Company*, 184 U. S., 540, 559; *Southern Ry. Co.* v. *Greene*, 216 U. S., 400).

(g) *The vice of the judgment below.*

A complaint of this character could probably not have been made of a judgment of ouster, suspensive in form (*State ex inf.* v. *Armour Packing Company*, 173 Mo., 356, 393), to become non-effective upon the *voluntary* performance of some subsequent corporate act. Such was the judgment below (Rec., 338, 339) against the Waters-Pierce Company. By a day fixed, that respondent voluntarily paid a fine of $50,000, and complied with the other conditions, upon the performance of which the ouster was suspended. So in *State ex inf. v. Armour Packing Company*, 173 Mo., 356, 393, each respondent avoided ouster by voluntarily paying a fine. So here had the judgments been for an ouster, but the enforcement suspended upon the payment of fines, respondents could then have decided whether they would voluntarily pay the fines, in order to avoid the forfeiture. The court in that event would not have unconditionally imposed fines. The vice in the judgments was, therefore, in adjudging an absolute forfeiture and then unconditionally adding thereto the impositon of fines of $50,000 each. It is apparent from what Judge Graves said (218 Mo., 471, 473; Rec., 441, 442), that a majority of the judges first entertained the opinion that a fine could not be imposed, but afterwards changed their minds (Rec., 436) upon the reasoning which he presented (Rec., 441, 442) in his concurring opinion. This view is emphasized by the thoughts expressed (Rec., 443, 444) in the dissent of Judge Lamm.

(h) *How the vice as to the Standard Oil Company can be cured.*

(1st) This, the highest court in the land, is empowered to do justice and thereby meet every emergency, and upon error enter

or direct the lower court to enter such judgment as it deems proper. The statute (Rev. Stat. U. S., 1878, Sec. 709), as here fully construed *Stanley* v. *Schwalby*, 162 U. S., 255, 279, 283, so recognizes by providing that upon writ of error to the state court, it can affirm, reverse or *modify* a judgment of a state court which is before it for review upon writ of error.

(2nd) The case of *U. S.* v. *Standard Oil Co.*, 173 Fed. Rep., 177, upon appeal, *Standard Oil Co.* v. *U. S.*, 221 U. S., 1, involved the question of whether there had been a violation of the Sherman anti-trust act by the Standard Oil form of organization and method of conducting business. The Sherman act does not, in substance, differ from the statutes of Missouri as construed below, further than that one applies to interstate and the other to state transactions. The same facts which adjudged guilt below were here held to establish guilt under the Sherman act. To prove the government's case, all the evidence offered below in the Missouri case was, in fact, offered therein; the same reasons for a decree and judgment were given by both state and federal courts. In the case under the Sherman act the defendants were given a fixed time in which to reorganize so as to avoid the consequences which now confront them. When the reorganization takes effect, the trust will be dissolved and the existing evils destroyed. As the organization in both cases made guilt, the reorganization will make clean. Hence if that reorganization takes place, as this court has heretofore decided would be proper, no objection can be made of a further violation of the state law by reason of the original reorganization.

(3rd) The large investments in Missouri are of great importance and entitled to serious consideration. The Standard Oil Company of Indiana, was wholly owned by the Standard Oil Company of New Jersey. Upon reorganization its stock will be distributed to the individual stockholders of that company. Not so with the Waters-Pierce Company. Large portions of that stock

(Opinion, Graves, J., 218 Mo., 1, Rec., 440, 441; Woodson, J., 218 Mo., 470, 407, 498, Rec., 436; Report 218 Mo., 394, Rec. 264) belong to outsiders having no connection with Standard Oil interests. The Standard Oil Company of Indiana (Ev. Moffett, Report, Rec., 240-244; Crenshaw, Rec., 254), has large investments in Missouri. Its refinery there cost $1,250,000. The extent of the investment was forcibly described by Judge Lamm in his opinion (218 Mo., 474, 476, Rec., 442) while Judge Woodson (218 Mo., 506, Rec., 445) enlarged upon the subject, at one time (Rec. 477) saying that the company had made from 1900 to 1907, after deducting 6% interest upon its investment, net profits from its business in Missouri, in excess of $1,000,000. The evidence (Rec., 241, 244, 254) not only showed $1,250,000 invested in a large refinery which each day produced from 1,000 to 1,200 barrels of refined oil, but many marketing plants in the state, with large investments, from which there were annually marketed 8,500,000 gallons of oil.

In case of absolute ouster, the consequences are fearful. If there be a literal construction and enforcement of sections 8972 (Rev. Stat. Mo., 1899), and of 8969 and 8975 (Laws of Mo., 1907, pp. 379, 380), the property becomes practically confiscated, and any person dealing therewith a felon. This subject hereafter (Infra. Div. II) will receive extended consideration.

(4th) There immediately occurs the thought whether it is possible to permit the company to remain in the state upon the same conditions that it is to be by this court permitted to there operate under the Sherman act. If that can be done, the fine imposed becomes of little importance. This result can be reached by a reversal of so much of the judgment as provides for a fine, and the modification of the ouster to the extent that it shall become effective and in force in case the respondent fails, within a fixed time, to reorganize its business in accordance with the de-

ree finally entered in *United States* v. *Standard Oil Company*, 173 Fed. Rep., 177, 211 U. S., 1, with the proviso that in case of uch reorganization within such time, the ouster shall not be enforced. Legally, there is no right to impose a fine, but should the court, in addition to such modification, also order that the fine imposed should, to avoid ouster, be paid, that requirement would be voluntarily met rather than take the consequences of being driven from the state. So much for the Standard Oil Company, so far s concerns the point now under consideration.

(i) *The judgment of ouster and a fine was clearly wrong as to the Republic Oil Company which voluntarily withdrew from he state. The action should, as to it, therefore, be simply abated t its costs.*

(1st) That which has just been said (Supra. Div. 1, subd.) applies only to the case of the Standard Oil Company, the ecord showing no reason for the Republic Oil Company to remain in or re-enter the state from which it has voluntarily withrawn.

(2nd) The commissioner's report was filed (Rec., 124) lay 24, 1907. Afterwards, upon June 11, 1907, the Republic il Company (Rec., 336), pursuant to and as expressly authorized y statute (Rev. Stats. Mo., 1899, Sec. 1018; opinion, Rec., 388, 18 Mo., 385-393) in due and proper form, presented to the secetary of state a formal withdrawal from the state. That section eads:

> "Sec. 1018: The president or secretary of every domestic incorporated company in this state, when it shall dissolve, and the principal officer of every foreign corporation when it shall retire from business in this state, is hereby required to file with the secretary of state an affidavit to that effect, and any failure to comply with the provisions of this section shall subject such company or the officers thereof to a penalty of from fifty to five hundred dollars, to be collected

as is provided for the collection of penalties and remuneration of prosecuting officers in section 1017 of this article. The mere retirement from business of a domestic corporation, without dissolution, shall not exempt it from the requirement to make reports under this article. The prosecuting attorneys in the various counties, to whom corporations are reported as having failed to comply with this act, when they shall be unable to find the officers of said corporations, or to secure service upon them for its violation, or when they shall ascertain that said corporations were dissolved before the passage of this act are hereby required to certify the fact to the secretary of state, separately as to each corporation, and such certificate shall be taken by the secretary of state as prima facie evidence that the corporation is defunct and out of existence for the purposes of the records of his office."

It could not thereafter have re-entered or remained in the state, if a party to a trust (Rev. Stats. Mo., 1899, Sec. 8973) nor unless a state officer granted it a license so to do (Id., 1024-1025). The withdrawal was below, upon October 15, 1907, (Rec., 335-336) spread upon the record. The trial was (Rec., 337) thereafter had upon October 23, 1907. The court below, held (Opinion Rec., 387-392, 218 Mo., 389) that this matter was, in accordance with the practice, properly presented. It also recognized that the failure of the secretary of state to mark the paper filed amounted to nothing, because under the statute all that was necessary for the corporation to do to accomplish the result was to present, for filing, the paper to the secretary. So the principle has been decided in Texas (*Holman* v. *Chevailler*, 14 Tex., 339). The court below, however, held that the withdrawal from the state only confessed part of that part of the relief which sought an ouster from the state, and in no wise answered the right of the state to have administered a punishment by a fine. This although no such relief was, by the information (Rec., 10) sought, and the court never thought of entering until it was confronted with the insistence of Judge Graves in (Rec., 441, 442) his concurring opinion.

(3rd) As shown by the authorities cited (Rec., 387, 218 Mo., 388-390) in Judge Woodson's opinion below, when this withdrawal was presented, all controversy as to the main issue disappeared, save and alone the question of costs. *In re Franklin Telegraph Co.*, 119 Mass., 449, was a case wherein it was held that where quo warranto was instituted for a misuse of power by a corporation in the execution of a lease, the cancellation of the lease prior to trial abated the proceeding as nothing but a moot case was left for decision. So in Alabama (*State* v. *Centerville Bridge Co.*, 18 Ala., 678-681, the state instituted proceedings to oust defendant from the exercise of its franchise, based on the non-compliance by it with a statutory requirement. Pending the litigation the legislature passed an act authorizing the assignee of the company to comply with the statute, provided that nothing therein contained should be so construed as to affect any suit pending in favor of or against said company. It was held that inasmuch as the limit of a judgment in quo warranto was a forfeiture of the franchise because of the non-compliance with the statute, the defect had been cured by the passage of the new law and nothing remained for the court to decide. Many other cases referred to below (Rec., 389; 218 Mo., 389) have been decided by the courts wherein quo warranto cases were abated because the terms of the offices in question had expired. The principle is that a controversy no longer existed, and the case had become moot.

(4th) The fact then remains that the Republic Oil Company having withdrawn from the state thereby gave to informant, in substance, the entire relief sought, which was (Information, Rec., 10) solely exclusion from the state. To thereafter retain the case and, without any claim for such relief, or intimation before judgment that it could be granted, adjudged against that company a fine of $50,000 was clearly the exercise of criminal jurisdiction in an original civil proceeding. Neither the common law, statute nor constitution so authorized. No pretense of a

right so to do was made, save and except that the constitution in giving original jurisdiction in quo warranto meant to give the remedy as it existed at common law. The utmost extent to which the common law has gone, as stated in *Ames* v. *Kansas*, 111 U. S., 449, 461, was to permit the imposition of a *nominal* fine. $50,000, with two judges asking to make it $1,000,000, was far from something nominal.

(5th) To impose a *substantial* fine in a confessedly *civil* proceeding does not accord due process of law, especially when a withdrawal from the state gave to the state all that was asked and all the court could give. Equal protection of the law was denied because no other class in the state could by any original proceeding in the Supreme Court be so criminally punished. There should therefore, as to this respondent, be a reversal of so much of the judgment as imposed a fine. That portion thereof which awarded the ouster should not be permitted to stand but in lieu thereof the action should as to the Republic Oil Company be, at its costs, abated, this upon the ground that there being nothing left to determine, the ouster was not due process.

II.

The effect of the judgment of ouster is confiscation under sections 8972 (Rev. Stats. of Mo. 1899) and 8969, 8975 (Laws of Mo. 1907, pp. 379, 380) whereby the obligation of a contract is impaired and the equal protection of the law denied.

(a) Section 8972 (Rev. Stat. of Mo., 1899) gives rise to another ground of complaint by the Standard Oil Company which has made large investments in Missouri, and will be much crippled

the literal enforcement thereof. Like complaint is made by Republic Oil Company. The constitutional validity of this tion was assailed by the answer (Rec., 114, 115, 123-124, par. by requests for the sixth declaration of law (Rec., 293) by ception 10 (Rec., 311, 321) to the master's report and by peti- n for a rehearing (Rec., 445-447, par. 1-5). Both the com- ssioner (Report, Rec., 299) and the court (Opinion, Rec., 375- 7; 218 Mo., 368-372, 377-378) denied the contention and dealt th the subject in glittering generalities making no distinction be- een the different sections, the validity of which was questioned.

(b) Sec. 8972 (Rev. Stats. of Mo., 1899) reads:

"That whenever the corporate rights and franchises of any corporation organized under the laws of this state have been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this article, and whenever the right and privilege of any corporation organized under the laws of any other state or country to do business in this state has been declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this article, it shall thereafter be unlawful for any person, association of persons or corporation, to deal in, sell or offer for sale in this state any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successor or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and jail imprisonment: *Provided*, that no statement made by any person in any affidavit made under the provisions of sections 8973 and 8974 of this article shall be competent as evidence against such person in any criminal prosecutions brought under this section."

It was substituted by the Act of March 19, 1907, (Laws of Mo., 1907, pp. 379, 380, secs. 8969, 8975) which also made it a felony for any one to fail to comply with section 8972 as substituted by section 8975. These substituted sections thus read:

> "Section 8969. Any person violating any of the provisions of this act, or who shall do any act prohibited or declared unlawful by the provisions of this act, shall be adjudged guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.
>
> Section 8975. That whenever the corporate rights and privileges of any corporation organized under the laws of this state shall have been declared forfeited by a judgment of a court of competent jurisdiction for any violation of the provisions of this act, and whenever the rights and privileges of any corporation organized under the laws of any other state or country to do business in this state, have been declared forfeited by a judgment of a court of competent jurisdiction for the violation of any of the provisions of this act it shall thereafter be unlawful for any person, corporation, or association of persons to deal in or offer for sale in this state any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or article or thing whatsoever, or contract of insurance against loss or damage by fire, lightning or storm, made, produced, manufactured or dealt in by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successors or assigns of any corporations whose rights, franchises or privileges have been so declared to be forfeited."

(c) The *literal* reading of sections 8969, 8972 and 8975, as applied to the present situation, is this:

The Standard Oil Company having been ousted from the state "by the judgment of a court of competent jurisdiction," cannot itself, nor could its successors or assigns to whom it might

sell its plant, nor any retail merchant thereafter deal in, sell or offer to sell in Missouri, either as a state or interstate transaction, any article, product or commodity made, produced or manufactured by that company, or such successors and assigns, either within or without the state. Any such sale at once would make a felon out of the vendor even if he were one who purchased the plant of the company or a disinterested retail merchant who bought from one who by purchasing the plant had become a successor or assign of the former owner.

(d) The character and great extent of the business, and the enormity of the investment, fully appear in the evidence of President Moffett (Report, Rec., 240, 244) and General Manager Crenshaw (Rec., 254), were repeatedly mentioned by the commissioner (Rec., 269, 276, 299) and forcibly described by Judge Lamm (Rec., 442, 218 Mo., 474) as "vested interests in the state in a plant of great value and a great business in the useful line of refining oils." Judge Woodson (Rec., 425, 218 Mo., 447) said:

> "Their business has grown from almost nothing in 1878 to gigantic proportions. The Waters-Pierce Company has assets worth $12,000,000 and the name and good will of the concern is valued at about $35,000,000 and it is paying dividends of six or seven hundred per cent upon a capitalization of $400,000. It is clearly inferable from this record that the Indiana Company has fared equally as well, if not better, than the Waters-Pierce Company."

The same judge (Rec., 427, 218 Mo., 506) also said that the company had from 1900 to 1907, in Missouri alone, after deducting six per cent interest upon its investment, made net profits in excess of $1,000,000. About $1,250,000 was invested in a very large refinery which each day produced from 1,000 to 1,200 barrels of refined oil. (Evidence, Moffett Report, Rec., 241, 242; Crenshaw, Id., 254). Many marketing stations existed in the state with large

investments therein, from which there were annually sold 8,500,000 gallons of oil (Id.)

(e) *It needs no argument to demonstrate that these sections do not accord the equal protection of the law.*

Neither an offending corporation nor its successor or assign, to whom it may sell its plant, under the literal reading of the statute may in the state deal in a commodity made by it. No person, may, in the state, deal in any commodity made by such corporation, its successor or assign. Individuals and partnerships engaged in the same business and alike guilty of the same act and of a violation of the same statute, cannot be so punished. Their property receives no such blight. According to previous decisions here, such discrimination is too clear to admit of discussion. (*Gulf etc. Ry. Co.* v. *Ellis*, 165 U. S., 150, 154; *Cotting* v. *Kansas City Stock Yards Co.*, 183 U. S., 79; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, 559; *Southern Ry. Co.* v. *Greene*, 216 U. S., 400.)

So by this section an unusual punishment was inflicted which could not reach an individual or co-partnership as to whom there is in such case a discrimination. The state constitution (Art. 2, Sec. 4) provides:

> "Sec 4. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the enjoyment of the gains of their own industry; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails of its chief design."

Therein is protection to individuals. If section 8972 is given life this section of the state constitution becomes as to a corporation, a dead letter and thus equal protection is denied. Moreover, literally followed, the section denies freedom in making contracts

which under the constitution of the United States cannot be denied. (*Allgeyer* v. *Louisiana*, 165 U. S., 578, 589; *Holden* v. *Hardy*, 169 U. S., 366, 390; *Lochner* v. *New York*, 198 U. S., 45, 53; *Adair* v. *U. S.*, 208 U. S., 161, 172, 173.)

The statute is not one of exclusion; it applies alike to all corporations, domestic and foreign, and therefore cannot be upheld upon the ground of being a condition to a foreign corporation entering the state or remaining therein. (*Carroll* v. *Greenwich Insurance Co.*, 199 U. S., 401, 409.)

(f) So the constitution of the United States is a protection against the act of the state regardless of the form which it takes or method it is to pursue. It may be by judgment of a court or come into existence for the first time by the effect to be given to such judgment. (*Terre Haute etc. R. Co.* v. *Indiana*, 194 U. S., 579, 589; *Attorney General* v. *Lowry*, 199 U. S., 233, 239; *C. B. & Q. R. Co.* v. *Illinois*, 200 U. S., 561, 580; *West Chicago St. R. Co.* v. *Illinois*, 201 U. S., 506, 519, 520.)

Here the court below enforced its own penalty of ouster for an abuse of a corporate privilege. The statute then said that the effect of that judgment is to prevent the use of property and to restrict the right of contract. The result is that either the judgment of ouster should be reversed because of the effect thereof or else so modified as to expressly recite that the provisions of sections 8972 and 8975 should and could not be enforced because thereof.

III.

The judgment of ouster as entered and especially as it is to be enforced under sections 8972 (Rev. Stat. of Mo. 1899) and 8975 (Laws of Mo. 1907, p. 380), unwarrantably inter-

feres with the right to do interstate business and hence it violates Section 8, of Article 1, of the Constitution of the United States.

(a) The opinion of the court below (218 Mo., 1, 376, 377, Rec., 381, 382) concedes that the right of the defendants to do interstate business cannot be impaired or interfered with even if the state anti-trust law had been violated. The cases of *Western Union Telegraph Co.* v. *Kansas*, 216 U. S., 1; *Pullman Company* v. *Kansas*, 216 U. S., 56, and *International Text Book Co.* v. *Pegg*, 217 U. S., 91, here recently decided, leave no doubt upon this subject.

(b) Turning then to the record it will be seen that the judgment (Rec., 338) recites that the license of the company is forfeited, annulled and cancelled, and the company is ousted of any and all rights, and franchises granted to it under the laws of the state, to further do business therein. As already seen, sections 8972 (Rev. Stat. of Mo., 1899) and 8975 (Laws of Mo., 1907, pp. 389, 390) provide that if in *any* court, whether supreme or circuit, there be a judgment of ouster, no one can, in Missouri, buy from the ousted company, its successor or assign, any article whatsoever which may have been made or produced by either. In other words, the Standard Oil Company cannot in Missouri sell, as an article of or in interstate business any article made at its refinery or elsewhere; or if it sells the refinery and marketing stations in Missouri, the purchaser thus becoming its successor or assign, cannot so sell.

The prohibition is also against any one, even a retail dealer, selling in the state if the commodity has been made even by the successor or assign of the ousted company. So, if the exact words used in the judgment should be construed not to apply to interstate business but only to a cancellation of the license to do a state business, still this section of the statute was one of those in the

article expressly mentioned in the judgment(Rec., 337) and is much broader with its penalties. These are visited upon *any* sale within the state, whether it be an interstate or a state transaction. Such a judgment of ouster should not be permitted to stand. There should have been added, as was done in a Texas case (*Waters-Pierce Oil Co.* v. *Texas*, 177 U. S., 28, 41), an express provision that nothing in the judgment should preclude the defendant, its successors or assigns, from dealing, in the state, in any article in interstate business.

(c) If, however, the language of the judgment is to be observed, it not only revokes the license, but also recites that the respondents are "hereby ousted of any and all rights accorded to them under the laws of this state from doing business in this state."

The constitution of the United States is a part of the law of Missouri. Under it there is the right to do an interstate business. By the act of the state the company was admitted there for the remainder of its corporate existence. Therefore, the judgment as it now stands may well be so construed as to cover state as well as interstate transactions. At least the possibility of such construction is sufficient to justify the necessity of its modification.

(d) It is apparent that the judgment of ouster as written should not stand against these objections. If not absolutely reversed, it should at least be modified. If any modification is made, it would not be unfair to add that, as already suggested (Supra. Div. 1, subd. h), any ouster should be suspended if, and whenever, there becomes effective the contemplated reorganization to meen the requirements made by the decree in *U. S.* v. *Standard Oil Company*, 173 Fed. Rep., 177, 221 U. S., 1.

IV.

The statute for the violation of which there was an ouster, was, prior to the trial repealed, and it was not due process of law to enforce it.

(a) The section for the violation of which judgment was rendered, was therein recited (Rec., 337), to be the act of March 24, 1877, and of April 2, 1891 (Laws of Mo., 1891, p. 186), appearing as sections 8965 and 8982 of chapter 143, of the Revised Statutes of Missouri of 1899. This reference to the act of 1877 was evidently a mistake, for the first anti-trust act was that of May 16, 1889 (Laws of Mo., 1889, p. 96), afterwards made sections 7319-7326 of the Revised Statutes of 1889.

(b) The acts of March 19th and 20th, 1907 (Laws of Mo., 1907, pp. 374, 377), repealed these former provisions by the first section of each providing:

> "Sections 8978, 8979, 8980, 8981 and 8982 of article II, chapter 143 of the Revised Statutes of 1899, are hereby repealed and certain new sections enacted in lieu thereof, to be known as sections 8978, 8979, 8980, 8981, 8982, 8982a and 8982b, which said new sections shall read as follows:" * * *
>
> "That sections 8965, 8966, 8967, 8968, 8969, 8970, 8971, 8972, 8973, 8974, 8975, 8976 and 8977, Revised Statutes of 1899, be repealed and there be enacted in lieu thereof certain new sections, to be known as sections 8965, 8966, 8967, 8968, 8969, 8970, 8971, 8972, 8973, 8974, 8975, 8976, 8977, 8977a, 8977b, and 8977c, which said new sections shall read as follows:" * * *

It is true that section 8977c of the second repealing act recites (pp. 381, 382) that the penalties incurred under the old laws should not be affected by this language:

> "The enactment and taking effect of this law shall not have the effect to release or extinguish any penalty, for-

feiture or liability incurred by any corporation or person on account of the violation of any law of this state prior to the taking effect of this act."

Inasmuch as the legislature could not constitutionally grant to the court below the power to impose any forfeiture or fine, as was stated in the opinion, this reservation had not, and cannot have, any application to proceedings pending in that court. In other words, there was being enforced by that tribunal the power granted to it at common law. The forfeitures, fines and penalties saved by the repealing act were those which existed by statute which the court expressly held could not be enforced by it. Therefore there was no saving of any penalties which the court below could, irrespective of statute, impose. Upon the repeal of the statute there could not have been there a judgment in quo warranto for a violation of its terms.

The case of *State* v. *Centerville Bridge Co.*, 18 Ala. 678,681, seems to be exactly in point. In that case the state instituted a proceeding to forfeit a franchise because of a non-compliance with the statute. Pending the litigation the legislature passed an act authorizing an assignee of the company to settle with the state, but provided that nothing therein contained should be construed as to affect any suit or suits then pending in favor of or against such company. The court held that when the legislature passed the new act, the result was to take away all grounds for quo warranto. Among other things it was by the court said:

> "Both plaintiff and defendant have united in vesting the subject matter of the controversy in a third person; the suit must therefore end, for further prosecution would be vain and fruitless. It is said in a suit to annul a title to an office will not be tried by quo warranto when at the time of the trial the term of office is expired. * * * We think the proviso was intended to apply only to suits brought by

the company against individuals or by individuals against the company. It could not have been the design of the legislature to give to Mayberry a privilege for the mere purpose of taking it from him by a suit then pending and without regard to any act of his."

The statute upon which the judgment rests, by its express terms having been repealed, it was not due process of law to permit the respondent to be ousted from the state for a violation thereof. The saving clause as to penalties had no reference to the powers of the Supreme Court. There was nothing left as a basis of quo warranto. A case or two will so illustrate. *In re Franklin Telegraph Co.*, 119 Mass., 449, was a proceeding in quo warranto to forfeit a franchise because of a non-compliance with the statute. Pending the litigation the lease was cancelled. The court dismissed the case because "the only injury alleged as a sufficient reason for the dissolution has therefore ceased to exist by the abrogation of the lease." So the cases cited (218 Mo., 389, Rec., 389, 390) below showed that the rule is almost universal, and is applied whenever the question becomes one of an abstract nature, like the expiration of the term of office which expires before the trial.

(c) This question is far from technical. The penalties imposed below were the result of an exercise by the court below of a power wholly independent of statute. It was a common law power vested by the constitution. The power was exercised because as the judgment (Rec., 337) expressly recites of a violation of a specific statute. Before judgment that statute was repealed, there was, therefore, (nothing upon which the exercise of such power could rest. There was for this reason no jurisdiction and hence no due process of law.

(d) If this view be sound it would result in a reversal of the entire judgment below.

V.

Judgment which should be entered here.

Finally to summarize the foregoing suggestions, these considerations are submitted as to the character of the judgment which should be entered here:

(a) If by reason of the repeal of the statute the violation of which was the basis of the jurisdiction (*Supra*, Div. 4) the court lost its power to oust, then there should be a reversal of the judgment and a dismissal of the proceedings.

(b) If as contended, (*Supra*, Div. 1, subd. a-g) there should not have been entered an ouster coupled with a fine, then there should be a reversal both as to the Standard and Republic Oil Companies.

This court has, however, power to modify a judgment. It could modify (Id. subd. h.) that against the Standard Oil Company by reversing the fine and providing that the ouster should not be enforced, if within a fixed time the business is reorganized in the manner required and contemplated as to interstate business in *Standard Oil Co.* v. *U. S.*, 221 U. S., 1.

(c) As to the Republic Oil Company this same modification could be made. But as it had before trial left the state and there was no power to fine, the simple method to adopt is to reverse and abate the action at its cost. (Id., subd., i.)

(d) If sections 8972 and 8975 are as contended (*Supra*, Div. II) invalid, then the judgment of ouster should be absolutely reversed because these sections give it an unconstitutional force; or else in addition to that already suggested there should be the further modification that the provisions of those sections should never be enforced because of the ouster herein adjudged.

(e) If the judgment of ouster as entered and as it is to be enforced, interferes with interstate commerce it should be reversed or else an addition to the modification suggested to meet the reorganization to be made in accordance with *United States* v. *Standard Oil Company*, 221 U. S., 1, there should be added a further modification to the effect that neither the ouster nor any effect thereof should apply to interstate business, but that the Standard Oil Company should have the free and absolute right in Missouri to use property in the manufacture and sale of its products for interstate shipment.

Respectfully submitted,

ALFRED D. EDDY,
ROBERT W. STEWART,
FRANK HAGERMAN,
Attorneys for Plaintiffs in Error

FILE COPY.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

Supreme Court, U.S.
FILED
NOV 11 1911
JAMES H. McKENNEY,
Clerk

No.

[illegible] INFORMA-
[illegible] ATTORNEY
[illegible] W. MAJOR,
[illegible]

[illegible] Plaintiff
[illegible]

[illegible] OF [illegible] ON THE INFORMA-
[illegible] OF [illegible] ATTORNEY,
[illegible] ELLIOTT W. MAJOR,
[illegible]

IN ERROR TO THE SUPREME COURT OF THE STATE OF [illegible].

REPLY TO DEFENDANT'S BRIEF FOR
DEFENDANT IN ERROR.

ALBERT D. EDDY,
ROBERT M. STEWART,
FRANK HAGERMAN,
Attorneys for Plaintiff in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 47.

STANDARD OIL COMPANY OF INDIANA,
PLAINTIFF IN ERROR,

vs.

STATE OF MISSOURI, DEFENDANT IN ERROR.

No. 48.

REPUBLIC OIL COMPANY, PLAINTIFF
IN ERROR,

vs.

STATE OF MISSOURI, DEFENDANT IN ERROR.

REPLY TO SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

Upon November 8, 1911, just as these cases were reached for argument, the State filed a supplemental brief for the first time suggesting that

there should be a dismissal because there was no summons to or severance of the Waters-Pierce Oil Company. As to this it is submitted:

1. The present record does not show whether there was or was not any such severance. The writs of error were allowed and citations issued to both the State and the Waters-Pierce Company and accepted by (Record, 1, 2) the Attorney General. The latter, upon September 21, 1909, signed a stipulation (Record, 484, 485) agreeing to the substitution of himself as informant, in lieu of the former Attorney General, and for the omission in printing of a part of the record. In addition there was filed herein, upon May 24, 1909, the stipulation attached hereto.

For some reason the clerk failed to print this document. Here was a complete and effectual appearance of the Waters-Pierce Company. It therefore knew of the writs of error and has never taken, nor intended to take, any steps in joining in the assignments of error. As a matter of fact it did actually sign a waiver of summons and consent to a severance in this language:

> "Not desiring to join in either writ of error sued out by the Standard Oil Company of Indiana or the Republic Oil Company, service of the citation on behalf of each of said companies, upon writ of error to the Supreme Court of the United States, is hereby accepted this 17th day of March, 1909."

This document seems to have been lost, and if it can be found and certified here will be subsequently printed.

Considering the time when the objection was first made, the court should now presume that when separate writs were allowed below there was a sufficient summons and severance. Moreover, the Waters-Pierce Company, having appeared herein, knew of the writs of error and has neglected and refused to join in the assignments. In addition to this, if permitted, that company will now file a waiver in any form which would meet the approval of the court. This should fully answer the point made. (Masterson *vs.* Howard, 10 Wal., 416.)

2. If a judgment be joint, a severance is necessary. The only reasons ever given for this rule are that the other party is entitled to know whether an appeal or writ of error will be prosecuted and that the appellate court shall not be vexed with successive appeals from the same judgment. (Williams *vs.* Bank, 11 Wheat., 441; Owings *vs.* Kincannon, 7 Pet., 399; Wilson *vs.* Life Insurance Co., 12 Pet., 140; Masterson *vs.* Howard, 10 Wal., 416; Hardee *vs.* Wilson, 146 U. S., 179.)

Here there could not be successive appeals, for the judgment (Record, 337) of December 23, 1908, became final (Record, 459) on March 9, 1909. The Waters-Pierce Company could not now sue

out a writ of error, because the time therefor has expired. Moreover, it has fully performed and accepted the judgment below and has no interest whatsoever in the cases of plaintiffs in error. The State could not be better informed as to the position assumed by that company.

There is nothing technical about a severance or summons. If the party knows of the proceeding and has had an opportunity to join in presenting the errors complained of, it is sufficient. (Masterson *vs.* Howard, 10 Wal., 416; O'Dowd *vs.* Russell, 14 Wal., 402.)

Mere failure to act after receiving notice of an intention of one party to appeal is enough. (O'Dowd *vs.* Russell, 14 Wal., 402.)

If, as in this case, the judgment be severable or so separate and distinct as not to affect the rights of others, the proceedings may be prosecuted without summons or severance. (German *vs.* Mason, 12 Wal., 259; Brewster *vs.* Wakefield, 22 How., 118; City National Bank *vs.* Hunter, 129 U. S., 557; Gulfillan *vs.* McKee, 159 U. S., 303; Cox *vs.* U. S., 6 Pet., 172; Todd *vs.* Daniel, 16 Pet., 521; Haurick *vs.* Patrick, 119 U. S., 156; Milner *vs.* Meek, 95 U. S., 252; Forgay *vs.* Conrad, 6 How., 201.)

Likewise, if one jointly interested has parted with his title. (Mercantile Trust Company *vs.* Kanawha, etc., R. Co., 58 Fed. Rep., 6; Aiken *vs.* Smith, 54 Fed. Rep., 894.)

So one defeated lien claimant can maintain the proceeding without joining others likewise defeated. (Milner *vs.* Meek, 95 U. S., 252.)

Tested by these rules, the judgments against these plaintiffs in error are separate and distinct and nothing in which the Waters-Pierce Company has any interest.

Respectfully submitted,

ROBERT W. STEWART,
ALFRED D. EDDY,
FRANK HAGERMAN,
Attorneys for Plaintiffs in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

STANDARD OIL COMPANY (OF INDIANA), *Plaintiff in Error,*

vs.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, *et al., Defendants in Error.*

REPUBLIC OIL COMPANY, *Plaintiff in Error,*

vs.

STATE OF MISSOURI on the Information of HERBERT S. HADLEY, Attorney General, *et al., Defendants in Error.*

Stipulation.

Separate writs of error were sued out in above-entitled cause, although in the Supreme Court of Missouri there was but one case against both the plaintiffs in error and one entry of a judgment, and the testimony was taken in one case.

It is therefore agreed that but one transcript need be filed and printed in this court. The cases

may be argued and submitted together and upon the same briefs.

Dated May 18, 1909.

(Signed) ELLIOTT W. MAJOR,
Attorney General.

(Signed) ALFRED D. EDDY,

(Signed) FRANK HAGERMAN,
Attorneys for Standard Oil Company (of Indiana) and Republic Oil Company.

(Signed) H. S. PRIEST,
Attorney for Waters-Pierce Oil Company.

Endorsed: File Nos. 21,665 and 21,666. Supreme Court U. S., October Term, 1908. Term Nos. 869 and 870. Standard Oil Company of Indiana, plaintiff in error, *vs.* State of Missouri on information of H. S. Hadley, Attorney General. Republic Oil Company, plaintiff in error, *vs.* State of Missouri on information of H. S. Hadley, Attorney General. Stipulation that cases may be heard together. Filed May 24, 1909.

FILE COPY.

IN THE

Supreme Court of the United States

FILED
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JAMES H. McKE

OCTOBER TERM, A. D. 1911.

No. 47.

STANDARD OIL COMPANY OF INDIANA, Plaintiff in Error,

v.

THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR, Attorney-General, Defendant in Error.

No. 48.

REPUBLIC OIL COMPANY, Plaintiff in Error,

v.

THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR, Attorney-General, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

DEFENDANT'S STATEMENT, BRIEF AND ARGUMENT.

ELLIOTT W. MAJOR,
Attorney-General.
CHARLES G. REVELLE,
Assistant Attorney-General,
Attorneys and Counselors for Defendant in Error.

THE HUGH STEPHENS PTG. CO., JEFFERSON CITY

PART I.

STATEMENT OF THE CASE AND SALIENT FACTS, ABSTRACT OF PLEADINGS AND SPECIFICATIONS OF ERROR.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1911.

No. 47.

STANDARD OIL COMPANY OF INDIANA, Plaintiff in Error.

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THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR, Attorney-General, Defendant in Error.

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THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR, Attorney General, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

DEFENDANT'S STATEMENT, BRIEF AND ARGUMENT.

STATEMENT OF THE CASE.

This is a *writ of error* to review the judgment of the Supreme Court of the State of Missouri entered on the 23rd day of December, 1908, adjudging that plaintiffs in error, by

reason of their violation of the statute of Missouri, entitled *"Pools, trusts and conspiracies; unlawful combinations,"* approved March 24, 1877, and an act of the General Assembly of the State of Missouri, approved April 2, 1891, entitled *"An act providing for the punishment of pools, trusts and conspiracies to control prices, and as to evidence and prosecution in such cases,"* have forfeited their license to do business in the State of Missouri, and that the same be cancelled and annulled, and that each of said plaintiff in error pay to the State of Missouri, in addition to said forfeiture, the sum of $50,000 for the violation aforesaid, of said laws. (*State ex inf. v. Standard Oil Co.*, 218 Mo. 1-507) (Record, pp. 337-340.)

The proceeding upon which this judgment was rendered was one in quo warranto instituted originally in the Supreme Court of the State of Missouri by the Attorney-General against the plaintiffs in error, the Standard Oil Company of Indiana, and the Republic Oil Company, and, also, the Waters-Pierce Oil Company against which judgment was rendered, but which company paid its fine and has not appealed.

Upon the joinder of issue, Honorable Robert A. Anthony, in accordance with the practice of the State Supreme Court in original proceedings, was appointed special commissioner to take evidence, with power and directions to report thereon his findings of fact and law to the court. (Record pp. 32-33.)

In conformity to such directions the commissioner heard the evidence and submitted his report sustaining the truth of the allegations in the information. (Record, 124-309.)

Upon exceptions to this report, filed by plaintiffs in error and the Waters-Pierce Oil Company, the Supreme Court of Missouri reviewed the whole case, adjudged the plaintiffs in error and the Waters-Pierce Oil Company guilty, and rendered judgment as above stated.

A.

ISSUES MADE BY THE PLEADINGS.

INFORMATION.

Under the provisions of the common law and the statutes of the State of Missouri against combinations and trusts, the Attorney-General, in the information upon which this action is predicated, charged in substance that the plaintiffs in error and the Waters-Pierce Oil Company, which latter company has not appealed, had, between the ——— day of ——— 1901, and the 29th day of March, 1905, created, entered into and become members of a pool, trust, agreement, confederation, combination, arrangement and understanding among themselves for the following purposes:

First: To regulate, fix and control the price to be paid by retail dealers and others in the State of Missouri for the refined products of petroleum sold and offered for sale in this State.

Second: To control and limit the trade in the refined products of petroleum in this State.

Third: To control, limit and prevent competition in the business of buying and selling the refined products of petroleum in this State between themselves and others engaged in like business.

Fourth: To deceive and mislead the public into the belief that said respondents were separate and distinct corporations, each pursuing an independent business as legitimate competitors in the purchase and sale of the products of petroleum.

There then follows an allegation that said respondents by said pool, trust, agreement, confederation, combination, arrangement and understanding had accomplished each and all of said unlawful and illegal purposes for which the pool,

trust, agreement, understanding and combination had been perfected.

It is further alleged that in the furtherance and enforcement of said pool, trust, combination, etc., formed by said respondents for the purposes set forth, and as a part thereof, said respondents had for the accomplishment of such unlawful purposes (1), divided the State of Missouri as a trade territory between the Standard Oil Company and the Waters-Pierce Oil Company, each refusing to sell oil in the territory of the other; (2) that the Republic Oil Company, sold oil in the territory of each of the other respondents to those who would not, by reason of prejudice against either of the other respondents, or for other reasons, buy of them; and crushed out competition in the sale of the products of petroleum by temporarily reducing the price thereof to the customers of such competitors, but that no actual competition existed between the Republic Oil Company and either of the other respondents in their respective trade territories.

(3) That the Standard Oil Company is engaged in the business of refining petroleum, and has at Whiting, Indiana and near Kansas City, Missouri, large refineries, but that by reason of said pool, trust, combination and agreement between said respondents, and in compliance with and enforcement thereof, said Standard Oil Company has agreed to sell and does sell the products of petroleum in the State of Missouri only to the Waters-Pierce Oil Company and Republic Oil Company and through itself, and that the Republic Oil Company and the Waters-Pierce Oil Company, by reason of said trust, combination and agreement, agreed to buy and do buy the products of petroleum only of the Standard Oil Company.

(4) That by reason of said trust, combination and agreements and the acts done in furtherance and in pursuance thereof, as above set forth, the respondents have been able to control and monopolize from 85 to 90 per cent of the oil

business in the State of Missouri; that they have thereby been able to control and do control the prices at which the products of petroleum are sold in Missouri; that they have prevented competition among themselves in said business; that they have controlled the purchase and the sale of the products of petroleum in the State of Missouri, have limited the trade therein, driven out competition and deprived the public of the benefits of competition in the purchase and sale of the products of petroleum and deceived and misled the public into the belief that the respondents are each independent of and competitors of each other.

There then follows another specific allegation as to the existence of a trust, combination and agreement between the respondents for the various unlawful purposes and for the doing of the various unlawful acts herein set forth. (Record, pp. 6, 7, 8, 9, 10.)

ANSWERS.

(1) Each of the allegations of the information are specifically *in ipsimisis verbis* denied by the Republic Oil Company, (pp. ———), and the Standard Oil Company, plaintiffs in error; they were also denied in the form of a general denial by the Waters-Pierce Oil Company, thus putting in issue the truth of each of the allegations of fact in the information.

After the conclusion of the testimony in the case, plaintiffs in error filed a second amended answer, in which it was pleaded, as additional defenses, that:

(2) Each of sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised Statutes of Missouri of 1899, upon which it is alleged the information is based, is unconstitutional and void, for each of the following reasons:

(a) It violates the Fourteenth Amendment to the Constitution of the United States.

(b) It violates the provisions of section 8, article 1 of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations and among the several States and Indian tribes, in which commerce respondent is engaged.

(c) It violates section 10 of article I of the Constitution of the United States, which provides that no State shall pass any ex post facto law, or law impairing the obligations of contracts.

(d) It violates section 4, article 2 of the Constitution of the State of Missouri, providing that all persons shall have a natural right to life, liberty and the enjoyment of the gains of their industry.

(e) It violates the provisions of section 30, article 2 of the Constitution of the State of Missouri, providing that no person shall be deprived of life, liberty or property without due process of law.

(f) It violates section 53 of article 4 of the Constitution of the State of Missouri, which forbids the Legislature from granting to any corporation, association or individual any special or exclusive right, privilege or immunity.

(g) It prohibits all barter and commerce by prohibiting any two or more persons from agreeing upon either the present or future price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever as between themselves, whether the same tends to the prejudice of the public interest or not, whether in restraint of trade, whether reasonable or unreasonable under the circumstances and limitations of such fixing of prices of said commodities, without regard to the relation of the parties to such agreement or their purposes, and in each of such respects violates each of the foregoing provisions of the State and Federal Constitutions.

(h) It arbitrarily discriminates as between the vendors and purchasers of such articles, in that it prohibits two or more vendors from agreeing among themselves to establish a reasonable price for such articles of merchandise, but does not prohibit the purchasers from agreeing to fix a price at which they may purchase said articles, and tends to assure, and does assure, to purchasers such prices as may be established by unhealthy and ruinous competition, but does not assure to the vendors protection or the right to protect themselves, by agreement or otherwise against ruinous rates established either by unwholesome or unhealthy competition or the combination of purchasers, and in each of such respects violates each of the foregoing provisions of the State and Federal Constitutions.

(i) It grants special privileges to the buyers of products of the character mentioned therein, by combination or otherwise, while denying to the manufacturers or vendors of the same right to protect themselves against such combination, or assuring themselves of the means of realizing a reasonable profit for their capital, labor and skill, and in each of such respects it violates each of the foregoing provisions of the State and Federal Constitutions.

(j) It arbitrarily discriminates between different classes of products and between labor and capital, between different kinds of insurance companies, and between different kinds of insurance, and also between different classes of persons, and in each of such respects violates each of the foregoing provisions of the State and Federal Constitutions.

(k) It applies to commodities and not to labor and other matters which may be the subject of combination, and thereby discriminates arbitrarily.

3. Respondent reavers each and every allegation set forth in division two of this return, and further respectfully shows that the informant claims that under the laws of this State and the construction of the statutes the respondent in

a quo warranto proceeding cannot attack the constitutionality of an act of the Legislature, the provisions of which are involved and sought to be enforced in said quo warranto proceedings, without admitting a violation of the said statute. And the informant claims that this court has so decided in the case of *State ex inf. Crow, Attorney-General, v. Firemen's Fund Insurance Company*, 152 Mo. 1. If any such contention be so maintained, or any such rule be so made, or any such statute be so construed, it will and does result in the State depriving this respondent of its property without due process of law, and will and does deny to respondent the equal protection of the laws, all contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, hereby and herein invoked.

4. If this be or is intended to be an action to dissolve or annul an unlawful combination or conspiracy, as it appears to be from the averments of informant, or to directly enforce the provisions of any of sections 8965, 8966, 8967, 8971, 8972 or 8978 of the Revised Statutes of Missouri of 1899, then this court has no jurisdiction of such action, for that no original jurisdiction is conferred upon it by the Constitution of this State, or by the statutes thereof, and hence this proceeding does not constitute due process of law, and is in violation of the Fourteenth Amendment to the Constitution of the United States, the provisions of which are hereby invoked.

5. Among other things, the relief sought in this case and the penalties prescribed by chapter 143 of the Revised Statutes of Missouri of 1899, upon which this action is based and to enforce which statutory provision this action is instituted, in that none of the property purchased, owned, held and used by the respondent within the State of Missouri can hereafter be used by any person, whether it be the respondent or a successor or assign thereof, for any purpose, without incurring the penalties prescribed in section 8972. Upon

the faith and in the reliance of the certifiate granted to it by the State of Missouri, to do business in the said State, as averred in the information, this respondent, long prior to the enactment of said chapter 143 or of those portions thereof sought to be enforced and which lie at the base of this proceeding, invested large sums of money in the acquisition of real estate at various points in said State, and expended still larger sums of money in erecting thereon structures and appliances suitable for the conduct of the business it was authorized to do in said State under the certificate aforesaid. Said property is peculiarly adapted to the business of this respondent, and is not valuable to any appreciable extent for any other business or purpose whatsoever, and, if the same cannot be used by this respondent or its successors or assigns for the purpose for which it was bought and constructed, and for which it is valuable and suitable, as aforesaid, the value thereof would be almost wholly destroyed, to wit: at least to the extent of 90 per cent thereof. Wherefore, the respondent says that the provisions of said section 8972, above mentioned, are in violation of sections 4 and 30 of article 2 and section 53 of article 4 of the Constitution of Missouri, and of section 8 of article 1, and the Fifth and Fourteenth amendments to the Constitution of the United States, each and every provision of which this respondent now hereby expressly invokes in its behalf, for that the effect of said statutes and of the enforcement thereof by granting the relief prayed by the present cause will be to deprive the respondent of its said property and its use without due process of law, to deny to this respondent the equal protection of the law, and to deprive it of life, liberty and property without due process of law, deprive respondent of the natural right of life, liberty and the enjoyment of the gains of its own industry, grant special and exclusive rights, privileges and immunities to others and interfering with respondent continuing to buy and sell

products in and ship products as articles of commerce to and from foreign nations and different States. Said properties are used in the conduct of interstate commerce, so that the prohibition of the use thereof operates as a regulation of interstate commerce and as a restraint upon commerce among the several states and territories and with the District of Columbia, within the meaning of the act of Congress of July 2, 1890, which act of Congress, by the express terms of the Constitution of the United States, constitutes a part of the supreme law of the land, having been passed by Congress by virtue of the power granted by the Federal Constitution. Said section 8972 is a part and parcel of an entire and complete system and the unconstitutionality of the above named mentioned provision destroys the entire chapter, or at least the article on which this action is based.

In complying with the laws of this State and in obtaining certificates and licenses to do business therein, as mentioned and set forth in the information, respondent paid money to the State of Missouri, which has been held and used by the said State, and on the faith of the statutes authorizing it to do business and the licenses issued, as stated in the information, respondent invested large sums of money in the State of Missouri. The licenses and rights to do business so granted by and acquired under the laws of Missouri were without any right or reservation on the part of the State to amend, alter or repeal the same. Among other rights thereby granted by the State to the respondent was one to make any and all reasonable contracts and agreements. No other kind of a contract was ever made by this respondent. Each of the provisions of sections 8965, 8966, 8967, 8968, 8971, 8972 and 8978 of the Revised Statutes of Missouri of 1899 impaired the obligations of the contracts made as aforesaid with the State of Missouri, whereby the provisions of section 10 of article 1 of the Constitution of the United States are violated.

B.

SPECIFICATIONS OF ERROR.

A judgment has been entered in above entitled cause, fining it in the sum of fifty thousand dollars, and ousting it from the right to do business in the State. The court in its judgment erred.

1. In denying to respondent the protection of the Constitution of the United States and amendments thereto in each of the respects claimed in its amended answer and return, and also in its motion for rehearing.

2. The court held that this was a civil proceeding and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding which was beyond the court's power and jurisdiction. The court thereby takes from respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the Fourteenth Amendment to the Constitution of the United States.

3. The judgment of ouster is also an exercise of power by way of original jurisdiction in a criminal cause, in view of the forfeiture and penalties imposed by section 8972 (Revised Statutes, 1899), and sections 8969 and 8975 of the Laws of 1907. These sections and the judgment ordered impair the obligations of a contract, take property without due process, abridges the privileges of respondent and fails to accord to it the equal protection of the law, all contrary to the Fourteenth Amendment to the Constitution of the United States and section 10 of article 1 of the said Constitution.

4. Sections 8983, 8984 and 8985 were by this court upheld as constitutional, whereas respondent claimed and still claims that they violate the Fourteenth Amendment to the Constitution of the United States in that they deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and also deprive it of its property without due process of law, in that there was a threatened penalty of a judgment against it if it did not comply with the order.

5. Sections 8965, 8966, 8967, 8971, 8972 and 8978 were repealed by the Laws of 1907, and after the institution of this suit new sections enacted in lieu thereof. It is true that the new law provides that the penalties incurred under the old law should not be affected. In as much as the Legislature cannot constitutionally grant to this court power to impose any forfeiture or fine, the reservation has, and can have, no application to proceedings pending here. Hence, the statutes here enforced (sections 8965, 8966, 8967, 8971 and 8978) have been repealed and to now enforce the same against respondent is to take its property without due process of law, abridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, abridge its privileges and immunities as a citizen and to deny to it the equal protection of the law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

6. The law as amended (Laws 1907, p. 377, et seq.) forbids an imposition of both a fine and a judgment of ouster or revocation of a license. The penalty is in the alternative. Such would be the relief as against others, Hence, when this court adjudged both a fine and a forfeiture, it denies to respondent the equal protection of the law and takes its property without due process of law, all contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States. (Record, pp. 479-482.)

C.

STATEMENT OF FACTS.

The following statement of facts, in connection with others, was found by the court to be true:

The Standard Oil Company of New Jersey, which will hereafter be called the New Jersey Company, is a corporation organized under the laws of New Jersey, with a capitalization of $110,000,000.

The Waters-Pierce Oil Company is a corporation organized under the laws of this State, with a capitalization of $400,000.

The Standard Oil Company of Indiana is a corporation organized under the laws of Indiana, capitalized at $1,500,000.

The Republic Oil Company is a corporation organized under the laws of New York, with a capital of $350,000.

The New Jersey Company owns practically all of the stock of the Indiana Company; sixty per cent of the stock of the Waters-Pierce Company, and all of the stock of the Republic Company. The New Jersey Company also owns practically all of the stock of several other oil companies, organized under the laws of various states. Mr. H. Clay Pierce owns the remaining forty per cent of the stock of the Waters-Pierce Company.

Practically all of the officers and directors of the Indiana Company and of the Republic Oil Company are either officers, directors or employes of the New Jersey Company; and a majority of those of the Waters-Pierce Company bear the same relation to the New Jersey Company.

The main office of the New Jersey Company is located at 26 Broadway, New York City; that of the Indiana Com-

pany is located at the same place; that of the Republic Company is located in Cleveland, Ohio; and that of the Waters-Pierce Company is in St. Louis.

The three latter companies kept books, papers and records at their main offices, showing full and complete transactions of each day's business, and each of them made full and complete reports of all of their business transactions to the New Jersey Company, even to the smallest detail. The business, books and accounts of each of those three companies are regularly inspected and audited by an auditor of the New Jersey Company twice a year.

These reports embraced, among other things, the sales and delivery of refined oils, deliveries of lubricating oils, comparative sales, deliveries of special oils, deliveries of outside oils, deliveries of wax candles, tank, wagon and milk can deliveries, sales and delivery of naphtha, marine sales, total sales and net results, semi-annual statements showing costs of barreling and making all kinds of oils and products of petroleum.

A daily cash statement was sent. These cash statements were turned over to the comptroller of the Standard Oil Company of New Jersey.

All of said companies deal in petroleum and the various by-products thereof. The New Jersey and Indiana Companies are producers and refiners of oil and are manufacturers of the various by-products thereof. The Republic Company for a year or so after its organization was also a producer and refiner of petroleum and a manufacturer of various by-products thereof, but was not manufacturing or refining at the time this suit was instituted. The Waters-Pierce Company has never produced or refined oil in this country, but is doing so in the Republic of Mexico.

The Indiana Company owns and operates a large refinery in Indiana and one at Kansas City, Missouri, and a third in the state of Kansas.

The Indiana, Waters-Pierce and Republic Companies are all vendors of refined oils and the by-products of petroleum. The two latter procure all of their supplies from the former.

There are several other oil companies doing business in this State, called "independent companies."

In 1878, by agreement between the Standard Oil Company and the Waters-Pierce Oil Company, there was the following division of territory made between them: Beginning at a point on the Mississippi river on the southern boundary of Lincoln county, thence in a western direction along the southern boundaries of Lincoln, Pike, Ralls, Monroe and Randolph counties; thence in a southwest direction along the eastern boundaries of Howard, Cooper, Pettis, Benton, St. Clair and Barton counties; and thence west along the southern boundary of Barton county to the Kansas line.

Under that agreement the Indiana Company took the territory lying north of that dividing line, and Waters-Pierce took that lying south of it. The latter company was also given Arkansas, Indian Territory, Oklahoma, Texas, Louisiana and the Republic of Mexico. This division of territory has been respected from the time it was made to the present, and neither the Waters-Pierce Company, upon the one hand, nor the New Jersey Company, upon the other hand, nor any of its subsidiary corporations, which include the Indiana Company, Standard Oil Company of Ohio, Consolidated Tank Line Company, Standard Oil Company of Kentucky, and the Standard Oil Company of Iowa have ever invaded each other's territory in quest of trade, except as will now be stated.

The Republic Company was the successor of the Schofield, Shurmer & Teagle Oil Company of Cleveland, Ohio, which was one of the independent companies, and the most

active competitor the Indiana and the Waters-Pierce Company had in this State. It had its own refineries, and refined and sold high grades of oil in all parts of the State and throughout the middle west generally. After the New Jersey Company had acquired the Schofield, Schurmer & Teagle interests, it caused the Republic Company to be organized, which took over the assets and property of the former, and continued to refine oil for a short time, and sold it in the same territory its predecessor had done. Not long after the organization of the Republic Company it ceased to refine oil, and its refineries were dismantled, and, after that, it procured all of its oil and supplies from the Indiana Company, and continued to sell oil in Missouri as before, with this limitation—it would compete vigorously for the trade of all of the independent companies, but never competed for the trade of the Indiana Company, nor for that of the Waters-Pierce Company, except upon three or four occasions, whereupon vigorous protests were entered by the Waters-Pierce Company to the New Jersey Company, which resulted in smothering out all competition between the Waters-Pierce and Republic Companies. And it may not be out of place to here state that the latter company, from its organization up to the time of the institution of this suit, masqueraded under and sold oils as one of the independent companies, and thereby caused the public to believe that it was an independent company.

The Indiana Company sells in the territory lying north of the dividing line, and not south of it, while the Waters-Pierce Company sells south of that line, and not north of it. All orders for oil received by the Indiana Company to be delivered in the Waters-Pierce Company's territory are turned over to the latter and by it filled; and all orders received by Waters-Pierce for oil to be delivered in the territory of the Indiana Company are turned over to the

latter, and by it filled. Whenever through mistakes or design the agents of either of those companies sells oil within the territory of the other, the transaction is turned over to that company and it reaps the benefit thereof.

Neither the Indiana Company nor the Waters-Pierce Company will sell to the independent companies except at retail prices; and both of them have waged a most relentless war against the independents by a system of espionage and rebates given upon sales of goods.

The oil for the Indiana Company, and all other subsidiary companies of the New Jersey Company, is transported through pipe lines and tank cars belonging to the latter company; while the oil for the Waters-Pierce Company is transported in tank cars, about one-half of which are owned by it, and the other half is owned by the New Jersey Company, which aggregate, if we correctly understand the record, about one hundred and thirty cars. But neither of the said companies will permit any of the independent companies to transport oil through the pipe lines or in their tank cars.

The Indiana Company, Waters-Pierce Company and the Republic Company all sell the same oils and grades of oil under different names or brands; each company having its own names or brands for the oils sold by it.

Prices for the products of petroleum, especially refined oils, illuminating and gasoline, are fixed by the Waters-Pierce Company.

It sends out to the trade card quotations, giving tank, wagon and barrel prices. As a rule, those prices are followed by all other oil companies, including the independent companies doing business in this State. As long as the independent companies do not reduce prices or increase the aggregate amount of their sales above ten or fifteen per cent of the entire amount of the sales made in the State, there is no war made upon them regarding prices; but when-

ever any independent company reduces prices below those fixed by Waters-Pierce, or whenever their aggregate sales exceed fifteen per cent of all sales made in the State, a vigorous warfare is waged against them, chiefly through the Republic Company, by means of an elaborate system of espionage in their business and cutting prices or giving rebates until the independents are glad to throw up their hands and say "enough," and be content to sell oil at the prices and in the quantities prescribed by the Waters-Pierce Company and acquiesced in by the Indiana and Republic Companies. And as a result of this method, the Waters-Pierce Company fixes the prices for which all such oils are sold in the State, by all dealers, including the independent companies, and, at the same time and by the same means, it controls and monopolizes for itself and the Indiana and Republic Oil Companies from eighty-five to ninety-five per cent of the entire oil business of the State.

The large capital, the means of transportation and the capacious and convenient storage capacity, taken in connection with the almost perfect and far-reaching delivery systems owned, possessed and controlled by the Indiana, Republic and Waters-Pierce Companies, enable them to carry out the business methods above mentioned.

All of the dividends of the Indiana, Republic and Waters-Pierce Companies were paid either directly or indirectly into the treasury of the New Jersey Company, except, however, those which were paid on the forty per cent of the stock of the Waters-Pierce Company owned by Mr. Pierce—those dividends were paid to Mr. Pierce, which were about seven hundred per centum per annum on the capitalization of $400,000. This $400,000, however, was not the entire assets of the Waters-Pierce Company. Its total assets amounted to about $12,000,000, which sum, if added to the estimated value of the "name and good will" of the con-

cera, the total assets would be swollen to the sum of $45,000,000.

The record seems to be silent as to the value of the assets of the New Jersey, Indiana and Republic Companies; nor does it disclose the amount of the annual dividends which have been paid by those companies.

It was a common and frequent occurrence that officers, directors and employes of the New Jersey Company and all its allied corporations, including the Waters-Pierce Company, were transferred from one of said companies to another, either by election or contract of employment.

Auditors working under Mr. Wade Hampton, general auditor of the New Jersey Company, regularly audited the books and accounts of all these companies and reported results to him at 26 Broadway, New York City. The salaries of these auditors were fixed by Mr. Hampton, and charged to the Waters-Pierce Company by him, when auditing for that company, which were paid by it, including all of their expenses. Mr. Pierce, however, testified that he had no knowledge of that fact, and that if he had known of it he would not have permitted it. This only emphasized the fact that the New Jersey Company exercised control over the Waters-Pierce Company without even consulting him.

Mr. H. M. Tilford, and succeeding him, Mr. R. H. McNall, was the commercial agent of the Waters-Pierce Company in New York, and his office was in the same rooms with the New Jersey Company, and it was through him that the business with the former company was transacted with the latter.

Mr. C. L. Nichols, president of the Republic Company, was also assistant to Mr. L. J. Drake, sales agent of the Indiana Company, both of whose offices were located at 26 Broadway with the New Jersey Company. Mr. Nichols instructed all officers, agents and employes of the Republic

Company to inform the trade that said company was an independent company and had no connection whatever with the New Jersey Company. This was done in order that it might sell oils to all persons who would not deal with the New Jersey, Waters-Pierce or other Standard Oil Companies. The bringing of this suit exposed the relations existing between the New Jersey and Republic Company, which destroyed its usefulness and necessitated its going out of business.

The same relations and conditions existing in this State between the Waters-Pierce Company and the New Jersey Company and its subsidiary corporations also existed between them in Texas, Oklahoma and Arkansas, with the exception that Waters-Pierce had those states as its exclusive territory.

The officers of all the respondents knew the stock of their respective companies was either owned or controlled by the New Jersey Company, as before stated. (Record, pp. 392-397.)

PART II.

ASSIGNMENTS NOT REVIEWABLE.

I.

ASSIGNMENTS NOT REVIEWABLE.

In view of plaintiff's misguided endeavor to preserve for review numerous non-federal questions, and in an effort to pave the way to the subjects which we are called upon to consider, we shall, as a preliminary, dispose of such phases by directing attention to certain well established principles which preclude this court from reviewing same.

A.

IT IS ELEMENTARY THAT ONLY FEDERAL QUESTIONS CAN BE CONSIDERED BY THE SUPREME COURT OF THE UNITED STATES IN REVIEWING THE JUDGMENT OF A STATE COURT.

Chicago Ins. Co. v. Needles, 113 U. S. 574.

Cornell University v. Fiske, 136 U. S. 152.

Barbier v. Connolly, 113 U. S. 27.

B.

WHETHER A STATUTE IS REPUGNANT TO THE STATE CONSTITUTION IS NOT A FEDERAL QUESTION, BUT ONE WHICH BELONGS EXCLUSIVELY TO THE STATE COURT AND THE DECISION OF THAT COURT IS CONCLUSIVE HERE.

The application of this rule is so uniformly recognized as to admit of denial in no case.

Poyras de la Laude v. Louisiana, 18 How. 192.

Re Kemmler, 136 U. S. l. c. 447.

Layton v. Missouri, 187 U. S. 356.

Levy v. San Francisco City & County Sup. Ct., 167 U. S. 175.

Mobile Transportation Co. v. Mobile, 187 U. S. 479.

Rassmussen v. Idaho, 181 U. S. l. c. 200.

Montana Co. v. St. Louis Mining & Milling Co., 152 U. S. 160.

In passing upon this question the court in *re Kimmler,* 136 *U. S. l. c.* 447, said:

> "The decision of the state court, sustaining the validity of the act under the State Constitution, is not re-examinable here."

Again, in *Rassmussen v. Idaho,* 181 U. S. l. c. 200, it is said:

> "The judgment of the Supreme Court of Idaho establishes that there is no conflict between this legislation and the Constitution of the State, and it is not within the province of this court to review that question."

Also, in the case of *Merchants Bank v. Pennsylvania,* 167 U. S. l. c. 462, 463, Mr. Justice Brewer, in delivering the opinion of the court, declared:

> "It is sufficient to say in reference to this contention that the decision of the Supreme Court of the State of Pennsylvania, sustaining the statute is conclusive in this court, as to any question of conflict between it and the State Constitution. *West River Bridge Co. v. Dix,* 6 How. 507; *Bucher v. Cheshire Railroad,* 125 U. S. 555; *Bell's Gap Rail-*

road v. Pennsylvania, 134 U. S. 232; *Lewis v. Monson*, 151 U. S. 545; *Adams Express Co. v. Ohio*, 165 U. S. 194; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685."

THE SUPREME COURT OF MISSOURI HAS, ON NUMEROUS OCCASIONS, SUSTAINED THE VALIDITY OF THE ANTI-TRUST LAWS UNDER WHICH PLAINTIFFS IN ERROR ARE BEING PROSECUTED, THE SAME BEING JUSTIFIED AS A PROPER EXERCISE OF THE POLICE POWER OF THE STATE.

State ex inf. v. Firemen's Fund Ins. Co., 152 Mo. 1.

State ex inf. v. Continental Tobacco Co., 177 Mo. 1.

State ex rel. v. Armour Packing Co. 173 Mo. 356.

State ex inf. v. Standard Oil Co., 194 Mo. 148.

State ex inf. v. Standard Oil Co., 218 Mo. 1.

C.

LIKEWISE THE PROPER CONSTRUCTION TO BE GIVEN A STATUTE, AND AS TO WHAT IS TO BE REGARDED AS WITHIN ITS TERMS, PRESENTS NO FEDERAL QUESTION.

The interpretation, application and scope of a state statute, as determined by the highest court of the State, is uniformly accepted by this court as final.

Phoenix Ins. Co. v. Gardner, 11 Wall. 204.

Morley v. Lake Shore Company, 146 U. S. 162.

Standard Oil Co. v. Tennessee, 217 U. S. 413.

Smiley v. Kansas, 196 U. S. l. c. 454, 455.

Waters-Pierce Oil Co. v. Texas, 177 U. S. l. c. 42.

St. L., I. M. & S. P. Ry. Co. v. Paul, 173 U. S. 404.

Armour Packing Co. v. Lacey, 200 U. S. l. c. 236.

In the case of *W. W. Cargill Co. v. Minnesota*, 180 U. S. 466-7, Mr. Justice Harlan, discussing this rule of practice, said:

> "The questions just stated are questions of local law, and in determining whether the statute violates any right secured by the Federal Constitution we must, in the particulars named, accept the interpretation put upon it by the State court. In *Tullis v. Lake Erie & Western Railroad*, 175 U. S. 348, 353, the question was as to the constitutionality of a statute of Indiana, relating to railroads and other corporations, except municipal corporations. The Supreme Court of that state held that the statute was capable of severance, and that its provisions as to railroads were not so connected in substance with the provisions relating to other corporations that their validity could not be separately determined. This court followed that view, declaring it to be an elementary rule that it should adopt the interpretation of the statute of a state affixed to it by the court of last resort thereof. See, also, *Mo. Pac. Ry. Co. v. Nebraska*, 164 U. S. 403, 414, *Chicago, Milwaukee, etc., Railway Co. v. Minnesota*, 134 U. S. 418, 456; *St. Louis, Iron Mountain, etc., Railway Co. v. Paul*, 173 U. S. 404, 408."

D.

THE QUESTION AS TO WHAT PENALTIES ARE PRESCRIBED BY THE LAWS OF MISSOURI FOR VIOLATIONS OF THE ANTI-TRUST ACT INVOLVES ONLY THE EXERCISE OF JUDICIAL INTERPRETATION AND IS NOT REVIEWABLE.

As to whether the State Constitution and statutes prescribe as a penalty both a forfeiture and fine, or authorize the infliction of both such penalties in a proceedings of this nature, is wholly a matter of interpretation and is within the rule heretofore announced, as is shown by the authorities cited under the preceding point.

In construing the law of Missouri with respect to this phase, the Supreme Court, at page 471, says:

> "For every offense against our laws we can say to them that we will take their license, and, in addition thereto, to affix a fine. This is as far as we can go. Their *existence* as a corporation (referring to foreign corporations), we cannot reach; their corporate life we cannot take; contracts which they have made and business which they have outside of Missouri, they can proceed to transact.
>
> * * * * * * * *
>
> It is true that, as a matter of law, we can take its corporate franchise for a violation of our laws (referring to domestic corporations). We can go even further and add a fine as penalty."

In dealing with the penalties provided for by the anti-trust laws of Texas, this court, in *Waters-Pierce Oil Co. v. Texas*, 212 U. S. l. c. 111, said:

> "The fixing of punishment for crime or penalties for unlawful acts against its laws is within the police power of the State. We can only interfere with such legislation and judicial action of the State courts enforcing it if the fines imposed are so grossly excessive as to amount to a deprivation of property without due process of law. *Coffey v. Harlan County*, 204 U. S. 659."

In this case it is not contended that the penalties imposed are so *excessive* as to constitute a taking of the plaintiff's property without due process of law. That is not the basis of the complaint and has no foundation in fact.

The case of *Coffey v. Harlan County*, 204 U. S. 659, involved the validity of a statute which provided that any one embezzling public money shall be imprisoned, and, in addition thereto, shall pay a fine equal to double the amount embezzled, which shall operate as a judgment for the use of the person whose money was embezzled.

In sustaining the constitutionality of this act, Mr. Justice Moody, speaking for the court, said:

> "It is within the power of the State to enact laws creating and defining crimes against its sovereignty, regulating the procedure in the trial of those who are charged with committing them, and prescribing the character of the sentence which shall be awarded against those who have been found guilty. In these respects the State is supreme and its power absolute, and without any limits other than those prescribed by the Constitution of the United States. The exercise of the power of the State in this field cannot be drawn in question in this court or elsewhere than in its own courts, except

for the purpose of restraining it within the limits thus established."

* * * * * *

"As part of the consequences of a conviction of the crime of embezzlement by a public officer, the law of Nebraska provides that a fine double the amount embezzled shall be inflicted, which shall operate as a judgment against the estate of the convict. It is not of the slightest importance whether this fine be called a penalty, a punishment or a civil judgment. Whatever it is called, it comes to the convict as the result of his crime."

In the case of *Missouri Pacific Railway Co. v. Nebraska*, 164 U. S. l. c. 414, Mr. Justice Gray, speaking for the court, said:

"The Supreme Court of Nebraska has construed this statute as authorizing the Board of Transportation to make the order questioned in this case." * * *

"The construction so given to the statute by the highest court of the State, must be accepted by this court in judging whether the statute conforms to the Constitution of the United States."

E.

THE DECISION OF THE STATE COURT THAT, ACCORDING TO THE RULES OF PRACTICE AND PROCEDURE IN MISSOURI PROCEEDINGS IN THE NATURE OF QUO WARRANTO ARE OF A CIVIL NATURE, IS CONCLUSIVE.

The construction placed upon the statutory and constitutional provisions relating to proceedings in the nature of quo warranto that such proceedings are civil and not criminal in their nature, is binding on this court.

In delivering the opinion of the court in the case of *Wood v. Brady*, 150 U. S. l. c. 23, Mr. Justice Brown, speaking to a similar question, declared:

> "The question whether an action to foreclose a lien of this kind is *in rem* or *in personam*, under the practice in California, is one upon which the decision of the Supreme Court is binding, and its ruling that plaintiff, being no party to defendant's suit to foreclose, had a right to show by evidence *aliunde* the invalidity of the judgments obtained by them, is not a proper subject for review by this court."

In *Brown-Foreman Co. v. Ky.*, 217 U. S. l. c. 571, this court said:

> "But the Kentucky Court of Appeals has construed the act as not a property tax, but as one imposing a license or occupation tax upon the business. * * * Such a construction and interpretation of the statute here involved by the highest court of the State should be accepted as definitely determining that the tax complained of is not a property tax, but a license tax imposed upon the doing of a particular business plainly subject to the regulating power of the State."

F.

THE HIGHEST COURTS OF MISSOURI HAVE UNIFORMLY CONSTRUED SUCH PROCEEDINGS TO BE OF A CIVIL NATURE.

Judge Graves, in *State ex rel. Delmar Jockey Club*, 200 Mo. l. c. 70, speaking to the points that such proceedings are not criminal; that fines and other penalties can be imposed, and that the Supreme Court of Missouri has jurisdiction, said:

> "These proceedings are no longer recognized as criminal proceedings and have not been so recognized since the early days of the common law, but we have continually imposed what are called 'fines,' a term, no doubt, coming down from the time when the proceeding was looked upon as a criminal proceeding. The implied contract with the State, when the charter was given respondent, was that it would exercise and use the granted rights; that it would use none other, or, stated otherwise, that it would not usurp other rights; that it would rightfully use the powers granted, and not misuse them. A willful failure of either of these covenants with the State will authorize a forfeiture, and why not a fine? We forfeit for nonuser, and why? Because there has been failure to perform the obligations to the State; because there has been a violation of the contract with the State. Misuser is likewise a violation of the implied agreement with the State. So is usurpation. Each are but violations of the implied contract with the State, and for these violations we declare forfeitures. Why not fix penalties and pun-

> ishments in the one as in the other? The gist of each in quo warranto is the willful violation of the rights of the State under the implied contract, and not the violation of some criminal law, for we do not try criminal cases and affix criminal punishments in quo warranto proceedings. The violation of a corporation's contract with the State by misuser or usurpation may be evidenced by the fact of the violation of some statute, criminal in character, but in this kind of a proceeding we try the right of the corporation to further hold its franchises, not the question of finding its guilt or innocence under the statute and fixing punishment permitted by the statute. It is the only way the State has of preventing the abuse of the confidences it has reposed in these corporate creatures which are of its own making. This abuse may be by nonuser, misuser or usurpation, but, in our judgment, the State has the same rights in each event, both as to the forfeiture and the fine.' (Also, see *State ex inf. v. Equitable Loan & Inv. Assn.*, 142 Mo. 325; *State ex inf. v. Armour Packing Co.*, 173 Mo. 356; *Waters-Pierce Oil Co. v. State of Texas* (Texas Civ. App.), 106 S. W. 918; *Stockwell v. U. S.* 13 Wall. 531.)"

In the case at bar, p. 353 (Record, pp. 366, 367), Judge Woodson, after citing and discussing a multitude of cases relating to this question, concludes, as follows:

> "And it is wholly immaterial, and the corporation cannot justify or defend its conduct in that regard by a plea, that such conduct was a violation of the criminal laws of the State, by which it and

its officers and agents are rendered amenable to the penalties and punishments thereof.

In other words, the laws of the State authorize and direct the Attorney-General to institute civil proceedings by information in the nature of quo warranto against any corporation to annul its charter and forfeit its franchises whenever it has by misuser, nonuser or usurpation of power, so conducted itself as to violate the laws of its being or the criminal laws of the State. If, upon trial, the corporation is found guilty, a decree of forfeiture must go, and the court has the power, in addition, to impose penalties for such violations of the laws as it may deem proper. This, however, does not proceed upon the theory that the corporation has been guilty of a crime and that it is being punished therefor; but upon the idea that there is an implied or tacit agreement on the part of every corporation, by accepting its charter and corporate franchises, that it will perform its obligations and discharge all its duties to the public, and that by failing to do so it commits an act of forfeiture which may be enforced by the State in the manner before suggested. (*State ex inf. v. Delmar Jockey Club*, 200 Mo. l. c. 70.)

In addition thereto, the Legislature has the unquestionable power and authority to declare the acts which will work a forfeiture of the charter shall also constitute a crime, and subject the corporation and its agents and servants to punishment under the criminal laws of the State. (*Stockwell v. United States*, 13 Wall. 531; *Waters-Pierce Oil Company v. State of Texas* (Texas Court of Civil Appeals), 106 S. W. 918; *State ex inf. v. Delmar Jockey Club*, 200 Mo. l. c. 50 to 55).

It must, therefore, follow from what has been said, that this is not a criminal prosecution, as contended for by respondents; nor is the procedure provided for in section 8971, Revised Statutes, 1899, the exclusive remedy available to the State to correct abuses and usurpation of powers by corporations doing business in this State."

G.

THE JUDGMENT OF A STATE COURT, RESPECTING THE EXTENT OF ITS ORIGINAL JURISDICTION IN QUO WARRANTO PROCEEDINGS AND IN DEALING WITH MATTERS UNDER STATE LAW, IS NOT REVIEWABLE HERE.

This involves merely a construction of a State statute and Constitution and local laws of practice and procedure. It is these laws, alone, that determine and prescribe the jurisdiction of the various state courts, direct that a case, under given circumstances, shall be tried in one forum instead of another, and determine by what process legal rights may be asserted or legal obligations be enforced. Such questions belong exclusively to the State courts.

Maxwell v. Dow, 176 U. S. 581.

Smith v. Adsit, 16 Wall. l. c. 189.

Tripp v. Railroad, 144 U. S. 126.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389.

Cincinnati Street Ry. Co. v. Snell, 193 U. S. l. c. 35, 38.

Hooker v. Los Angeles, 188 U. S. l. c. 319.

Twining v. New Jersey, 211 U. S. l. c. 110, 113.

C., B. & Q. R. R. v. Chicago, 166 U. S. l. c. 226.

Brown v. New Jersey, 175 U. S. 172.
League v. Texas, 184 U. S. l. c. 158.
Cackus v. Union Depot Co., 169 U. S. l. c. 570.

That a State has full control over the practice and procedure to be pursued in its courts, and to fix and determine the jurisdiction of its courts, has often been adjudged.

Thus, in *Missouri v. Lewis*, 101 U. S. l. c. 31, it was said by Mr. Justice Bradley, speaking for the court:

> "We might go still further and say with undoubted truth that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory."

Again, in *Ex parte Reggel*, 114 U. S. l. c. 651, Mr. Justice Harlan used these words:

> "That commonwealth (Pennsylvania) has the right to establish the forms of pleadings and process to be observed in her own courts in both civil and criminal cases."

Also, Mr. Chief Justice Fuller, speaking for the court in *Hooker v. Los Angeles*, 188 U. S. l. c. 318, 319, declared:

> "The Fourteenth Amendment does not control the power of a State to determine the form of procedure by which legal rights may be ascertained, if the method adopted gives reasonable notice and affords a fair opportunity to be heard. *Iowa Central R. R. Co. v. Iowa*, 160 U. S. 389; *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685.
>
> The construction of a law of a State that it was competent for the court to try and determine in a

condemnation proceeding, an adverse claim of the plaintiff therein to an interest in property sought to be condemned, is conclusive on this court."

In the case of *Waters-Pierce Oil Co. v. State of Texas*, 212 U. S. Rep. l. c. 107, it is said:

> "That State legislatures have the right to deal with the subject matter and to prevent unlawful combinations to prevent competition and in restraint of trade, and to prohibit and punish monopolies, is not open to question. *National Cotton Oil Co. v. Texas*, 197 U. S. 115; *Smiley v. Kansas*, 196 U. S. 447. Having the power to pass laws of this character, of course, the State may provide for proceedings to enforce the same. The State, keeping within constitutional limitations, may provide its own method of procedure and determine the methods and means by which such laws may be made effectual. 'The limit of the full control which the State has in a proceeding of its courts, both in civil and criminal cases, is subject only to the qualifications that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution.' *West v. Louisiana*, 194 U. S. 258, 263; and see *Davis v. Texas*, 139 U. S. 651; *Brown v. New Jersey*, 175 U. S. 172, 175; *Allen v. Georgia*, 166 U. S. 138, 140; *In re Converse*, 137 U. S. 624, 632, and *Twining v. New Jersey*, 211 U. S. 78, decided at this term of court, where the subject is fully discussed, and previous cases in this court cited."

Again, in *Smith v. Adsit*, 16 Wall. l. c. 189, Mr. Justice Strong in delivering the opinion of the court, said:

"The judgment of the State court respecting the extent of its equitable jurisdiction is, of course, not reviewable here."

Also, Mr. Justice White, speaking for the court in *Iowa Central R. R. Co. v. Iowa,* 160 U. S. l. c. 393, declared:

"It is apparent that this defense merely asserted that the rights of the corporation as a citizen of the United States would be impaired by enforcing the claim urged against it on the motion, instead of by another and less summary form of action. But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the State court prosecuted or determined by one form of action instead of by another. It is also equally evident, provided the form sanctioned by the State law gives notice and affords an opportunity to be heard, that the mere question of whether it was by a motion or ordinary action in no way rendered the proceeding not due process of law within the constitutional meaning of those words. Whether the court of last resort of the State of Iowa properly construed its own constitution and laws in determining that the summary process under these laws was applicable to the matter which it adjudged, was purely the decision of a question of State law, binding upon this court. Mere irregularities in the

procedure, if any, were matters solely for the consideration of the judicial tribunal within the State empowered by the laws of the State to review and correct errors committed by its courts. Such errors affect merely matters of State law and practice, in no way depending upon the Constitution of the United States or upon any act of Congress. *Ludeling v. Chaffe*, 143 U. S. 301, 305.

As said by this court, speaking through Mr. Chief Justice Fuller, in *Leeper v. Texas*, 139 U. S. 462, 468: 'Law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied.' There was a 'regular course of administration' in the case at bar, as that term was employed in the case cited.

It is manifest that it was never contemplated by the framers of the Constitution that this court should sit in review, as an appellate court, of such a question as that presented by the record in the case at bar. * * *

It was not a denial of a right protected by the Constitution of the United States to refuse a jury trial, even though it were clearly erroneous to construe the laws of the State as justifying the refusal. *Brooks v. Missouri*, 124 U. S. 394; *Spies v. Illinois*, 123 U. S. 131, 166."

The contention that the Supreme Court of Missouri had no jurisdiction to hear and determine this cause, for the reason that it involved an inquiry as to whether plaintiffs in error have done acts which were in violation of the provisions of the statute for which other penalties are also prescribed, is entirely in conflict with the decisions and well established practice in this State for over half a century.

Likewise, the contention that the Supreme Court of Missouri was not authorized to both decree a forfeiture of its franchise and impose a fine.

These proceedings have never been recognized under the Constitution of Missouri as criminal proceedings, but have been from the earliest days construed as civil in their nature.

The jurisdiction of the Supreme Court in such cases is conferred by article VI, section 3 of the Constitution of the State of Missouri in the following language:

> "It shall have power to issue writs of habeas corpus, mandamus, *quo warranto*, certiorari and other remedial writs, and to hear and determine same."

The jurisdiction thereby conferred in quo warranto has been universally construed by the Supreme Court of Missouri to mean jurisdiction of an information in the *nature of a quo warranto*, and, in the exercise thereof, forfeitures have been decreed and fines imposed.

State ex rel. v. Stewart, 32 Mo. 373.

State ex rel. v. Vail, 53 Mo. 97.

State ex inf. v. Equitable Loan & Inv. Co., 142 Mo. 325.

State ex inf. v. Delmar Jockey Club, 200 Mo. 34 l. c. 51, 68-70.

State ex rel. v. Standard Oil Co., 218 Mo. l. c. 345.

In the case of *State ex inf. v. Equitable Loan & Investment Company, supra*, the Supreme Court of Missouri, speaking through Judge Sherwood, said:

> "At common law, 'the old writ of quo warranto is a civil writ, at the suit of the crown; it is not a

criminal prosecution. This was the true *old way* of inquiring of usurpations upon the crown, by holding fairs or markets, viz.: by writs of quo warranto. Then informations in the nature of a quo warranto came into use and supplied their place.' These observations fell from Mr. Justice Wilmot in *Rex v. Marsden,* 3 Burr, 1817, in the year 1765. See *High Ex. Leg. Rem.* Sec. 603. In Blackstone, written in 1758, some seven years before the last mentioned period, it is asserted that the proceeding by quo warranto 'is properly a criminal method of prosecution.' Cooley's Black., book 3, ch. 17, p. 262. But whatever the origin of the writ, whether civil or criminal, it is certain now at the present time and for a long period anterior to this, it has been and is but a civil suit. There is a distinction, of course, to be taken, a distinction pointed out by Scott, J., in *State v. Ins. Co.,* 8 Mo. 330, between a writ of quo warranto and an information in the nature of a quo warranto, but while this is true, yet it is also true even in Blackstone's time, the issuance of the writ itself, owing to its cumbersome length, had long fallen into disuse, which resulted in the modern substitutionary and more speedy method of the filing of ex officio informations by the Attorney-General. Cooley Black., book 3, ch. 17, p. 262.''

''Our Constitution provides, in the third section of its sixth article, that this court 'shall have power to issue writs of *habeas corpus, quo warranto, certiorari* and other original remedial writs, and to hear and determine the same.' In as much as the issuance of a writ of quo warranto had not occurred in England for centuries; in as much as courts,

> lawyers and text-writers had been accustomed for hundreds of years to use the expression '*writ of quo warranto*' as the legal equivalent and synonym of 'information in the nature of a *quo warranto*,' it will be presumed that the framers of our Constitution were not unmindful or ignorant of such a common form of expression and the meaning which it bore, and, therefore, when they used the words 'writ of *quo warranto*,' they intended thereby only to convey in abbreviated form the meaning that phrase had for so long a period and so continuously been employed to convey, to wit, 'informations in the nature,' etc."
>
> "Since writing the above, it has been found that in other states possessing organic laws like our own, similar conclusions have been reached. *State v. Railroad*, 34 Wis. 197, and cases cited; *State v. Gleason*, 12 Fla. 190, and cases cited; *High, Ex. Leg. Rem.*, Secs. 610, 611."

And, in the same case, in a consideration of the question as to whether an information in the nature of a quo warranto could be sustained against a corporation for a misuse or abuse of franchise by reason of its failure to comply with a statute when the Legislature had provided special penalties to be enforced in other proceedings for a violation thereof, was passed upon in the following language, l. c. 337:

> "And the jurisdiction of this court in this regard being conferred by the Constitution, it is beyond the power of the Legislature to take it away, and it will not be intended that a legislative enactment was designed to take such jurisdiction away, although such enactment should confer another and distinct remedy upon some inferior court or board.

State v. Allen, 5 Kan. 213; *State v. Massmore*, 14 Wis. 115; *Kane v. People*, 4 Neb. 509; 19 *Am. & Eng. Ency. of Law*, 664; *People v. Bristol Co.*, 23 Wend. 222; *People v. Hillsdale Turnp. Co.*, 1b. 254; *State v. Baker*, 38 Wis. 71; *High, Ex. Leg. Rem.*, Sec. 615; 2 *Spelling Ex. Rlf.*, Secs. 1772, 1873. In consequence of this well recognized principle, sections 7 and 8 of the laws of 1895, pages 31 and 32, in relation to the duties of the supervisor of building and loan associations, to institute proceedings in the circuit court against a delinquent building and loan association, and that such proceeding shall be conducted by the Attorney-General, cannot abate the jurisdiction conferred on this court by the Constitution, nor deprive the Attorney-General of his common law, and inherent powers to file ex officio informations, as in the present instance."

H.

THE QUESTION AS TO WHETHER THE PENALTY SECTION OF THE LAW UNDER WHICH THESE PROCEEDINGS WERE INSTITUTED WAS REPEALED BY A SUBSEQUENT LEGISLATIVE ACT, INVOLVES NO FEDERAL QUESTION, AND IS NOT REVIEWABLE.

This court will not consider the question as to whether the penalty section of the law in force at the time this suit was instituted was repealed by the Legislature of 1907, which was passed before final judgment herein was rendered.

These proceedings were instituted on the 29th day of March, 1905, under and in pursuance of the laws enacted in 1889 and the amendatory acts of 1891-1895. Two years thereafter, to wit, in 1907, and before final judgment was rendered in this cause, said laws were repealed, and, in lieu

thereof, other and similar laws enacted. The act of 1907 expressly provided:

> "The enactment and taking effect of this law shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred by any corporation or person on account of the violation of any law of this State prior to the taking effect of this act."

On this phase, the case of *Morley v. Lake Shore Railway* Company, 146 U. S. l. c. 166, 167, is decisive. The court says:

> "The first question we have to consider is the effect to be given to the saving clause contained in the first section of the act of June 20, 1879, which provides that nothing therein contained shall be so construed as to in any way affect any contract or obligation made before the passage of that act. This question is answered for us by the decision of the court of appeals of New York in this very case, holding that this saving clause is not applicable in the case of a judgment like the plaintiff's. In *Louisiana v. Pilsbury*, 105 U. S. 278, 294, this court, speaking by Mr. Justice Field, says: 'Whether such a construction (by judicial decisions upon a clause of the state constitution) was a sound one, is not an open question.
>
> The exposition given by the highest tribunal of the State must be taken as correct so far as contracts made under the act are concerned. . . . The construction, so far as contract obligations incurred under it are concerned, constitutes a part of the law as much as if embodied in it. So far does this doctrine extend, that when a statute of two states,

expressed in the same terms, is construed differently by the highest courts, they are treated by us as different laws, each embodying the particular construction of its own state, and enforced in accordance with it in all cases arising under it.'

'The rule of construction adopted by the highest court of the state, in construing their own constitution, and one of their own statutes in a case not involving any question re-examinable in this court under the twenty-fifth section of the judiciary act, must be regarded as conclusive in this court.' *Provident Institution v. Massachusetts*, 6 Wall. 611, 630.

'The construction given to a statute of a state by the highest judicial tribunal of such State is regarded as a part of the statute and is as binding upon the courts of the United States as the text.' *Leffingwell v. Warren*, 2 Black, 599, 603. The meaning of a state statute declared by the highest court of a state, is conclusive upon this court. *Randall v. Brigham*, 7 Wall. 523, 541. If, then, the law as enacted by the Legislature, and construed by the state judiciary, will be the law of the state, it follows that, as to the proper construction of the statute, and as to what should be regarded as among its terms, no Federal question could arise. The most that could be claimed would be that, although the statute of the state was unobjectionable, yet the state court had erroneously construed it. This would constitute a purely judicial error, involving no question of the validity of the law.''

This question, however, is immaterial, since independent of any statute, the Supreme Court of Missouri has jurisdiction in quo warranto proceedings with the consequent and

concomitant power to adjudge a forfeiture and fine. This jurisdiction and power to punish is lodged in that court by the State Constitution and cannot be destroyed by a legislative act, and that court has so declared in cases heretofore cited, as well as in the case at bar.

Even if the section referred to had been repealed, as asserted by plaintiffs, the court still had the power to render the judgment it did, and this court cannot interfere.

Waters-Pierce Oil Co. v. Texas, 177 U. S. l. c. 47.

I.

THIS COURT WILL NOT CONSIDER THE ASSIGNMENT THAT SECTION 8972, R. S. 1899, AND SECTIONS 8967 AND 8975 OF THE LAWS OF 1907, ARE INVALID.

These provisions relate only to transactions after conviction, and in no manner affect the validity of a judgment in pursuance of the anti-trust laws. They merely prohibit, under penalty, the dealing in articles, products and commodities made, produced and manufactured by corporations whose franchises have been forfeited for the violation of the anti-trust laws. While they do not have the effect assigned to them by plaintiffs in error, yet, if they did, this could afford no relief against the judgment rendered. They authorize criminal prosecution for certain acts and are separable from the anti-trust law.

In disposing of a similar question, this court, in *National Cotton Oil Co. v. Texas*, 197 U. S. l. c. 133, said:

> "But it may be said that if the inequalities of prior anti-trust acts have been removed by the act of 1899 they still remain in the Revised Statutes of the State and in the penal code, and by those statutes and that penal code the excepted classes

are exempted from indictment and punishment, while the oil company is subject to both. We need not consider the statutes referred to or consider how far this discrimination can exist, in view of the decision of the Supreme Court in *State of Texas v. Laredo Ice Company*. Granting it can exist, the case at bar is not a criminal prosecution. It involves only the anti-trust laws and their prohibitions, and penalties."

The rule in this respect is correctly stated in the Encyclopedia of Law and Procedure, Vol. 8, p. 798, as follows:

> "It is a well settled principle that the constitutionality of the statute will not be determined in any case unless such determination is absolutely necessary in order to determine the merits of the suit to which the constitutionality of such statute has been drawn in question, and then only where the part of the statute alleged to be unconstitutional is involved in the controversy and the remaining portion is incomplete and inoperative in itself."

It will be time enough to consider their validity when the State attempts to enforce such provisions.

McChord v. L. & N. Railroad Co., 183 U. S. l. c. 495, 496.

Hatch v. Reardon, 204 U. S. l. c. 160.

Patterson v. Bank, 190 U. S. l. c. 176.

Arbuckle v. Blackburn, 191 U. S. l. c. 413, 415.

Castillo v. McConnico, 168 U. S. l. c. 680.

Supervisors v. Stanley, 105 U. S. l. c. 311.

Clark v. Kansas City, 176 U. S. l. c. 118.

Reduction Co. v. Sanitary Works, 199 U. S. l. c. 318.

Another reason why this assignment is unavailable is that it was raised for the first time in the motion for rehearing, and the Supreme Court of Missouri did not pass thereon. It is well settled in this court that a review of the judgment of a state court is confined to the assignment of errors made and passed upon in the judgment of a state court brought here for review. The assignment of errors in this court cannot bring into the record any new matter for consideration.

And a Federal question cannot be raised for the first time in a petition or motion for rehearing, unless the state court actually passes thereon.

An order merely overruling or denying the motion, or basing the denial upon other grounds, does not pass upon nor preserve the question.

Harding v. Ill., 196 U. S. 78.

McCorquodale v. Texas, 211 U. S. 432.

Waters-Pierce Oil Co. v. Texas, 212 Mo. l. c. 115, 117.

Levy v. Thomas, 207 U. S. 93.

Loeber v. Schroeder, 147 U. S. 580, 585.

Pim v. St. Louis, 165 U. S. 273.

J.

NEITHER DOES THIS COURT REVIEW, BUT, ON THE CONTRARY, ACCEPTS AS CONCLUSIVE THE FINDINGS OF FACT MADE BY THE STATE COURT, AND THAT SUCH FACTS CONSTITUTE A VIOLATION OF THE LAW AS CONSTRUED.

Quinby v. Boyd, 128 U. S. 488.
Egan v. Hart, 165 U. S. 188.
Dower v. Richards, 151 U. S. 658.
Thayer v. Spratt, 189 U. S. 346.
Waters-Pierce Oil Co. v. Texas, 212 U. S. 86.
Gardiner v. Bonesteel, 180 U. S. 362.
Christman v. Miller, 197 U. S. 313.
Chapman et al. v. Bigelow, 206 U. S. 41.

In the case of *Waters-Pierce Oil Co. v. State of Texas*, 212 U. S. Rep. l. c. 106-7, which was a prosecution by the State of Texas for a violation of the anti-trust law, the court said:

> "And in the findings which we have above quoted as to the evidence, the state court has found that the defendant has been since May 31, 1900, a party to an agreement with the Standard Oil Company of New Jersey to create a monopoly and to control prices and prevent competition in Texas, and that to a large extent the object has been accomplished. These findings of fact are conclusive upon us, and show that the conviction was had, for acts and transactions committed and carried out within the State of Texas."

And in the same case, at page 97, Mr. Justice Day further said:

> "The case was submitted upon oral arguments and elaborate briefs and a voluminous record. It was argued, in many aspects, as though this were a proceeding in error to review the weight of the evidence adduced in the state courts, to re-examine the rulings of the court upon the admissibility of testimony, and to determine the effect of the statute of limitations in the state.
>
> The jurisdiction of this court to review the proceedings of the state courts, as we have had frequent occasion to declare, is not that of a general reviewing court in error, but is limited to the special instances of denial of Federal rights, whether those pertaining to the constitutionality of Federal or state statutes, or to certain rights, immunities and privileges of Federal origin, especially set up in the state court and denied by the rulings and judgment of that court. Sec. 709, Rev. Stat. U. S. Nor does this court sit to review the findings of fact made in the state court, but accepts the findings of the court of the state upon matters of fact as conclusive, and is confined to a review of questions of Federal law within the jurisdiction conferred upon this court. *Quimby v. Boyd*, 128 U. S. 488; *Egan v. Hart*, 165 U. S. 188; *Dower v. Richards*, 151 U. S. 658; *Thayer v. Spratt*, 189 U. S. 346. We shall not, therefore, undertake to follow counsel in the consideration of all questions argued, but shall limit our review to questions of a Federal nature which we deem to be properly made in this record and essential to the decision of the case."

Again, in the case of *Thayer v. Spratt,* 189 U. S. 353, it is said:

> "There is not a word of any proof showing any fraudulent act on the part of the entrymen or of their transferee, the defendant herein, and, on the contrary, there is proof of an absence of any fraud and the *bona fide* purpose on the part of the entrymen to properly avail themselves of the act of 1878.
>
> "But however this may be, we are precluded by the finding of facts in the State court from looking at the evidence upon which such findings may rest. Upon a writ of error to a State court this court has no right to review its decision upon the ground that the finding was against evidence or the weight of evidence. *Eagan v. Hart,* 165 U. S. 188; *Gardner v. Bonesteel,* 180 U. S. 362, 370; *Bement v. National Harrow Company,* 186 U. S. 70, 83; *Jenkins v. Neff,* 186 U. S. 230, 235."

In *Eagan v. Hart,* 165 U. S. l. c. 189, Mr. Justice White said:

> "The record before us contains all the testimony introduced and evidence offered in the trial court, all of which was open for consideration and passed upon by the Supreme Court of the state of Louisiana. On error, however, to a state court, this court cannot re-examine the evidence, and when the facts are found below is concluded by such finding. *Dower v. Richards,* 151 U. S. 658; *Bartlett v. Lockwood,* 160 U. S. 357; *Stanley v. Schwalby,* 162 U. S. 255, 278. True it is that in *Dower v. Richards* the court (referring to the dictum in *Republican River Bridge Co. v. Kansas Pacific Railway,* 92 U. S. 315, 317) treated as open for further consideration the

> question whether in chancery cases the power existed in this court to review the decision of state courts on both the law and the fact. We, however, conclude that not only the very nature of a writ of error, but also the rulings of this court from the beginning, make it clear that on error to a state court in a chancery case, as in a case at law, when the facts are found by the court below, this court is concluded by such findings. The adjudications are collected very fully in *Dower v. Richards* and in the subsequent cases above referred to."

In *Smiley v. Kansas*, 196 U. S. l. c. 454-5, Mr. Justice Brewer, speaking for the court, said:

> "The Supreme Court of the State held that the acts charged and proved against the defendant, were clearly within the terms of the statute, as well as within the police power of the State; and that the statute could be sustained as a prohibition of those acts, irrespective of the question whether its language was broad enough to include acts and conduct which the Legislature could not rightfully restrain. We accept the construction given to a state statute by that court."

PART III.

DISCUSSION OF FEDERAL QUESTIONS PASSED UPON BY THE STATE COURT.

I.

THE AUTHORITY OF THE STATE LEGISLATURE TO PASS LAWS PROHIBITING THE MAKING OF AGREEMENTS OR THE FORMING OF COMBINATIONS IN RESTRAINT OF TRADE, OR THE CARRYING OUT IN THE STATE OF SUCH AGREEMENTS OR COMBINATIONS, IS ABSOLUTE AND COMPLETE.

That the State of Missouri had the right to enact the statute under review and to prevent and punish agreements and arrangements in restraint of trade, or which are designed, or tend to prevent competition in the sale and manufacture of commodities and products, is no longer open to question.

Waters-Pierce Oil Co. v. Texas, 177 U. S. 28.

Waters-Pierce Oil Co., 212 U. S. 86.

Standard Oil Co. v. Tenn., 217 U. S. 415.

Standard Oil Co. v. U. S. (not yet officially reported).

National Cotton Oil Co. v. Texas, 197 U. S. 115.

Smiley v. Kans., 196 U. S. 447.

Mungler v. Kans., 113 U. S. 31.

Addyston Pipe & Steel Co. v. U. S., 175 U. S. 211.

Carroll v. Greenwich Ins. Co., 199 U. S. 410.

Joint Traffic Assn. v. U. S., 171 U. S. 338.

U. S. v. Trans-Missouri Frgt. Assn., 166 U. S. 290.

Northern Securities Co. v. U. S., 193 U. S. 197.

II.

THE STATE LIKEWISE HAS THE ABSOLUTE RIGHT TO PRESCRIBE THE PUNISHMENT FOR VIOLATIONS OF THE ANTI-TRUST LAWS.

While this involves no Federal question and is not reviewable here, as is shown by authorities heretofore cited, yet, the Legislature, having the jurisdiction to pass laws prohibiting combinations in restraint of trade, has the absolute right to prescribe the punishment for a violation of such laws, and the laws under consideration are open to no constitutional objections on account of penalties.

Waters-Pierce Oil Co. v. Texas, 212 U. S. l. c. 111.

Coffey v. Harlan County, 204 U. S. 659.

National Cotton Oil Co. v. Texas, 197 U. S. 115.

Ripley v. Texas, 193 U. S. 504.

Ohio v. Lloyd, 194 U. S. 445.

Marvin v. Trout, 199 U. S. 212.

McCray v. U. S., 195 U. S. 27.

Divine v. Los Angeles, 202 Mo. 302.

Railway v. Hume, 115 U. S. 512.

Telephone Co. v. Ind., 165 U. S. 304.

Railway Co. v. Seegers, 207 U. S. 73.

O'Neil v. Vermont, 144 U. S. 323.

N. W. L. I. Co. v. Riggs, 203 U. S. 251.

III.

THE STATUTE RELATING TO THE PRODUCTION OF BOOKS, PAPERS AND WITNESSES UPON AN ORDER OF THE COURT, AFTER DUE NOTICE AND OPPORTUNITY TO BE HEARD, DOES NOT VIOLATE ANY PROVISION OF THE FEDERAL CONSTITUTION.

Plaintiffs in error challenge the validity of sections 8983, 8984 and 8985, Revised Statutes of Missouri, 1899, which authorize the court before which an anti-trust proceeding is pending, to make an order, upon proper showing by the prosecuting officer, and after due notice and opportunity to be heard, directed to the accused for the production of books, papers and evidence.

It is contended that said sections deny plaintiffs in error the equal protection of the law, abridges its privileges and immunities and deprives it of its property without due process of law, in that there was a threatened penalty of judgment against it if it did not comply with the order made in pursuance of the authority conferred by said sections. This statute will be found at pages ——, and will not be here set out. It is practically a rescript of the Arkansas statute, which this court reviewed and upheld in the case of *Hammond Packing Company v. Arkansas*, 212 U. S. 322.

In disposing of the assignment that the action of the trial court in making the order to produce and, on failure to comply therewith, striking the pleadings of the Hammond Company from the files and rendering a judgment as by default, was void because repugnant to the equal protection and due process clauses of the Fourteenth Amendment, this court said:

"As the conduct of the trial court on the subjects with which this proposition is concerned conformed to the authority conferred by sections 8 and 9 of the statute, it follows that the proposition is that those sections are repugnant to the fourteenth amendment. The grounds which are made the basis of this proposition are numerous and are stated in various forms not separated one from the other. We shall disentangle them and treat them separately, and thus consider and dispose of them all.

"It is said, conceding that the power which section 8 confers could be exerted under just limitations, yet the order made, which was authorized by the statute, was so unlimited, so arbitrary and unjust as to cause it to be wanting in due process. This rests upon the assumption that the order to produce the books and papers of the company and the witnesses, was imperative, and did not consider the ability of the company to comply, furnished no compulsory process to compel obedience in case a named witness refused to appear at the request of the company, and therefore left the company helpless and subject to pains and penalties for a failure to do that which it may not have been in its power to do. But again the proposition rests upon the assumption that the statute and the order which conformed to it did that which the court below decided it did not do. Conceding, for the sake of the argument, that the broad provisions of section 8 and the general language of the order to produce, might on their face be amenable to the criticism which the proposition involves, the statement we have previously made demonstrates that the court below, by a construction which is binding here, expressly de-

cided that neither the statute nor the order were subject to the interpretation which the argument attributes to them. Indeed, the court impliedly conceded that, if the statute and the order meant that which the argument contends they did mean, both the statute and the order would have been void. But in intimating to that effect it was expressly held that all the statute required was a bona fide effort to comply with an order made pursuant to its provisions, and therefore any reasonable showing of an inability to comply would have satisfied the requirements both of the statute and the order. As the Hammond Packing Company absolutely declined to obey the order and stood upon what it deemed to be its lawful rights and privileges, even if that course of conduct was taken because of a contrary conception as to the meaning of the statute, it is not within our province to afford relief because of an error of judgment in this respect. That is to say, we may not hold that the statute and order were arbitrary and unjust in the particulars asserted when it is conclusively determined that they do not have that effect.

"It is insisted that the order to produce was so general and indefinite as to amount to an unreasonable search and seizure, and consequently was wanting in due process of law. But conceding, for the sake of argument only and not so deciding, that the due process clause of the fourteenth amendment embraces in its generic terms a prohibition against unreasonable searches and seizures, a question hitherto reserved, under circumstances analagous to those here present, in *Consolidating Rendering Company v. Vermont*, 207 U. S. 541, we think the ruling made

in that case establishes the unsoundness of the contention. We say this because it was in that case determined in view of the visitorial powers of a State over corporations doing business within its borders and the right of the State to know whether the business of a corporation was being carried on in a lawful manner, that it was competent for the State to compel the production of the books and papers of the corporation in an investigation to ascertain whether the laws of the State had been complied with. And of course such power embraces the authority to require the giving of testimony by the officers, agents and other employes of the corporation for like and analogous purposes. It is true that the books and papers to which the order made in the cited case related were those of a foreign corporation doing business in Vermont, and which had been kept in the State, but had been taken therefrom. But we see no reason to hold that this case is not controlled by the principle applied in the Consolidated Rendering Co. case, because the books of the Hammond Company, which were called for, may not have been at any time kept within the State of Arkansas.

"Nor do we think there is merit in the contention that the order to produce was wanting in due process because it was made in a pending suit and sought to elicit proof not only as to the liability of the company, but also the proof in the possession of the company relevant to its defense to the claim which the State asserted. As these subjects were within the scope of the visitorial power of the State and concerning which it had the right to be fully informed, the mere incident or purpose for which the lawful power was exerted affords no ground to deny

its existence. In Consolidating Rendering Co. v. Vermont, the books and papers were required for an investigation before a grand jury concerning supposed misconduct of the corporation. The power to compel the production to ascertain whether wrong had been done, in the nature of things, as the greater includes the less, is decisive as to the right to exact the production for the purpose of proof in a pending cause. See *Hale v. Henkel,* 201 U. S. 43. If, as was in that case decided, the power of visitation could be exercised, even although it might lead to the production of incriminating evidence merely because the order in this case called for evidence in the possession of the corporation relative to its defense did not affect the validity of the order.

"The contention that because section 8 applies only to books and papers outside of the State, therefore it denies the equal protection of the laws is not open, since it has been conclusively settled that, without denying the equal protection of the laws, relations may be based upon the fact that persons or property dealt with are not within the territorial jurisdiction of the regulating authority. *Central Loan & Trust Co. v. Campbell,* 173 U. S. 84. Even if, as contended, the remedy given by the act for the production of books and papers and the examination of witnesses is confined to corporations and joint stock associations, and does not extend to individuals, that fact also furnishes no ground for the proposition that a denial of the equal protection of the laws thereby resulted. The wider scope of the power which the State possesses over corporations and joint stock associations in and of itself affords a ground for the classification adopted.

"Lastly, with much earnestness and elaboration, it is urged that the action of the court, authorized by section 9, in striking the answer from the files and rendering a judgment as by default, is conclusively demonstrated to have been a denial of due process of law by the ruling in *Hovey v. Elliott*, 167 U. S. 409, and the previous cases in this court which were there cited and applied. The rule in Hovey v. Elliott was that to punish for contempt by striking an answer from the files and condemning, as by default, was a denial of due process of law, and therefore repugnant to the fourteenth amendment. There the power to strike out and punish was exerted, by the court, in virtue of what it assumed to be its inherent authority, and the occasion which caused the exercise of the assumed authority was the refusal of the defendant to comply with an order to pay into the registry of the court a sum of money which, it was held, had been illegally withdrawn, and the right to which was at issue in the suit. Merely because the power to strike out an answer and enter a default, which was exerted by the court below in this case, was authorized by the ninth section of the statute furnishes no ground for taking this case out of the ruling in Hovey v. Elliott, if otherwise controlling. The fundamental guarantee of due process is absolute and not merely relative. The inherent want of power in a court to do what was done in Hovey v. Elliott was in that case deduced from no special infirmity of the judicial power to reach the result, but upon the broad conception that such power could not be called into play by any department of the government without transgressing the constitutional safeguard as to due process, at all times

dominant in and controlling where the Constitution is applicable. Indeed in Hovey v. Elliott, the impotency of the legislative department to endow the judicial with the capacity to safeguard the Constitution was emphasized. But while this is true the question yet remains, is the doctrine of Hovey v. Elliott here applicable? To determine this question we must take into view the authority below, exerted not from a merely formal point of view, but in its most fundamental aspect. That is to say, we must trace the power to its true source, and if from doing so it results that the authority exerted flows from a reservoir of unquestioned power, it must follow that the action below was not unlawful, albeit in some narrower aspect that action might be considered as unlawful. The essential basis for the exercise of power and not a mere incidental result arising from its exertion is the criterion by which its validity is to be measured. Hovey v. Elliott, involved a denial of all right to defend as a mere punishment. This case presents a failure by the defendant to produce what we must assume was material evidence in its possession and a resulting striking out of an answer and a default. The proceeding here taken may therefore find its sanction in the undoubted right of the lawmaking power to create a presumption of fact as to the bad faith and untruth of an answer begotten from the suppression or failure to produce the proof ordered, when such proof concerned the rightful decision of the cause. In a sense, of course, the striking out of the answer and default was a punishment, but it was only remotely so, as the generating source of the power was the right to create a presumption flowing from the failure to pro-

duce. The difference between mere punishment, as illustrated in Hovey v. Elliott, and the power exerted in this, is as follows: In the former due process of law was denied by the refusal to hear. In this the preservation of due process was secured by the presumption that the refusal to produce evidence material to the administration of due process was but an admission of the want of merit in the asserted defense. The want of power in the one case and its existence in the other are essential to due process, to preserve in the one and to apply and enforce in the other. In its ultimate conception therefore the power exerted below was like the authority to default or to take a bill for confessed because of a failure to answer, based upon a presumption that the material facts alleged or pleaded were admitted by not answering, and might well also be illustrated by reference to many other presumptions attached by the law to the failure of a party to a cause to especially set up or assert his supposed rights in the manner prescribed by law.

"As pointed out by the court below, the law of the United States as well as the laws of many of the States, affords examples of striking out pleadings and adjudging by default for a failure to produce material evidence, the production of which has been lawfully called for. *Revised Statutes U. S., section* 724, which was drawn from section 15 of the judiciary act of 1789, after conferring upon courts of law of the United States the authority to require parties to produce books and writings in their possession or under their control which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by

ordinary rules of proceedings in chancery, expressly empowers such courts, if the plaintiff fails to comply with the order to render a judgment of non-suit, and if a defendant fails to comply the court may, on motion, give judgment against him by default." From the time of this enactment, practically coeval with the Constitution, although controversies have arisen as to its interpretation, no contention, so far as we can discover, has ever been raised, questioning the power given to render a judgment by default under the circumstances provided for in the statute. Its validity was taken for granted by the court, speaking through Mr. Chief Justice Taney, in *Thompson v. Selden*, 20 How. 194, and this was also assumed by the court, speaking through Mr. Justice Bradley, in *Boyd v. United States*, 116 U. S. 616, where the effect of the constitutional guarantees embodied in the fourth and fifth amendments were elaborately and lucidly expounded. It is unnecessary to cite the many cases in the lower Federal courts which manifest the same result, as they will be found collated in Gould & Tucker's notes on the Revised Statutes, under section 724, and in the notes to the same section, contained in volume 3, Federal statutes annotated.

"And, beyond peradventure, the general course of legislation and judicial decision in the several states indicates that it has always been assumed that the power existed to compel the giving of testimony or the production of books and papers by proper regulations prescribed by the legislative authority, and for a failure to give or produce such evidence, the law might authorize a presumption in a proper case against the party refusing, justifying the rend-

ering of a judgment by default, as if no answer had been filed. While it may be true that in some of the state statutes passed on the subject, and in decisions applying them, some confusion may appear to exist ,resulting from confounding the extent of the authority to punish as for a contempt and the right to engender a presumption relative to proof arising from a failure to give or produce evidence, it is accurate to say that when viewed comprehensively the statutes and decisions in effect recognize the difference between the two, and therefore may be substantially considered as but an exertion by the states of a like power to that which was conferred upon the courts of the United States by the original judiciary act and by Revised Statutes, section 724.

"Without referring in detail to the various statutes, which will be found collected as of the year 1896, in Vol. 6, Ency. Law and Practice, note 3, pp. 812, et seq., we content ourselves with saying that the laws of Indiana, Iowa, Mississippi, Massachusetts, *Missouri*, New Hampshire, Texas and Washington, aptly portray the subject. *As illustrative, we refer specially to the statute of Missouri*, which directs that when a party refuses to produce evidence or fails to attend to testify on a proper order, besides being punished as for a contempt, the court may strike out the answer filed on behalf of the defendant, etc. This distinction is also marked in the Indiana and Washington statutes. Although the State of Mississippi, which authorizes, in the event of a failure to obey a proper order as to the production of evidence, the striking of an answer from the files and the entry of judgment by default does not in terms refer the authority thus given to the legislative

power to engender a presumption, the true source of the power was clearly pointed out in the concurring opinion of Whitfield, J. (now Chief Justice of the Supreme Court of Mississippi), in *Illinois Central R. Co. v. Sanford,* 75 Mississippi, 862, and the distinction was made manifest between the power to create a presumption of fact and the want of authority as a mere punishment for contempt to deny a hearing, as ruled in Hovey v. Elliott. And the difference between the two is also elucidated in an opinion of the Supreme Court of the State of Washington in *Lawson v. Black Diamond Mining Co.,* 44 Wash. 26, which interpreted and enforced a statute of the State of Washington, embraced in section 6013, and immediately antecedent sections of Ballinger's Annotated Code and Statutes.

"As the power to strike an answer out and enter a default, conferred by section 9 of the act of 1905, which is before us, is clearly referable to the undoubted right of the lawmaking authority to create a presumption in respect to the want of foundation of an asserted defense against a defendant who suppresses or fails to produce evidence when legally called upon to give or produce, our opinion is that the contention that the section was repugnant to the Constitution of the United States is without foundation."

Again, in the case of *Consoldidated Rendering Co. v. Vermont,* 207 U. S. l. c. 550, Mr. Justice Peckham, while dealing with a question quite similar, said:

"We take the findings of fact by the state court as conclusive upon us. It therein appears that the company was duly served with a notice (which was

in substance a substitute for a subpoena *duces tecum*) to produce books and papers required, and that they had not been destroyed, but were then under its control and custody; that the papers were material evidence upon the subject of inquiry before the grand jury, and that the company had (with some minor exceptions) omitted and refused to produce them before that body. The company had a hearing before the court, and an opportunity was given it, under the statute, to set up any reasonable cause for its failure to comply with the requirements of the notice. The court, after this hearing, found the company guilty of the contempt charged, and fined it accordingly.

The company insists that the proceedings were in violation of the Constitution of the United States. The objections made before us were: (1) That the notice to produce was in excess of the authority granted by the statute, and was therefore invalid; (2) that neither the statute nor the notice afforded the company an opportunity to present in court reasons why the writings demanded should not be produced; (3) that the effect of the statute is to limit a corporation in the complete dominion and control of its property situated in another state, although the corporation is not organized under the laws of the state of Vermont, and is not personally within her jurisdiction; (4) that the statute attempts to confer judicial functions upon nonjudicial bodies, in violation of the Fourteenth Amendment to the Constitution of the United States; (5) that the statute and notice required the company to produce writings which tend to incriminate it, without extending immunity against criminal prosecution;

(6) that the statute and notice authorized an unreasonable search and seizure of the private books and documents of the company; (7) that the statute provided no compensation for the time, trouble and expense imposed upon a corporation in a foreign state or country of collecting and sending the documents demanded to the state of Vermont, and, lastly, (8) that the statute is confined in its operation to corporations, thus making an arbitrary classification, by which the company is deprived of the equal protection of the law secured by the Fourteenth Amendment.

The first objection made by counsel for the company is not of a Federal nature. Whether the notice to produce was broader than the statute provided for is a question of the construction of the State statute, and of the notice, and the decision of the state court is final on that question.

Counsel insisted before us, in discussing the second objection, that the failure to give an opportunity to be heard why the books should not be produced, deprived it of due process of law guaranteed under the Fourteenth Amendment. Without discussing the question whether this matter comes within the meaning of due process of law, we may say that the objection to the statute is not borne out by its text. The company had under its provisions, and by the fourth section, full opportunity to show cause before the court why it did not produce the papers, and the Supreme Court of Vermont has held in this case that any objection to the production of the papers made before the grand jury would have raised the question before that body, which it would have been its duty to report to the court for its ac-

tion. Upon such question the company would have been entitled to be heard, and it was in fact heard before the court previous to any decision by the court regarding the right of the company to withhold the papers. So long as a hearing is given before any proceeding is concluded to enforce the production of the papers, due process of law is afforded. *Simon v. Craft*, 182 U. S. 427; *Wilson v. Standefer*, 184 U. S. 399, 415; *New Orleans Waterworks Co. v. Louisiana*, 185 U. S. 336, 349.

The third objection is without force. It is argued that the statute in this particular denies the process of law to the company, because it authorized the infliction of a fine by the court for failure to perform an act outside the State, ordered by a non-judicial body, and without notice and opportunity for hearing. The last reason has already been answered by showing that a hearing is provided for before any punishment of the company for disobedience to the requirements of the notice to produce can be enforced. There can surely be no illegality in providing that a corporation doing business in the State and protected by its power, may be compelled to produce before a tribunal of the State material evidence in the shape of books or papers kept by it in the State, and which are in its custody and control, although for the moment outside the borders of the State. The statute is in no sense a provision as to how the company shall perform its duties and obligations in other states. It directs the company doing business in the State and present therein, by its officers, or some of them, to do something which it is entirely competent to do, the purpose of which is to aid the tribunal in making the investigation under a state statute to perform its duty.

Fourth. There is no provision in the Federal Constitution which directly or impliedly prohibits a state, under its own laws, from conferring upon nonjudicial bodies certain functions that may be called judicial. It is said that the statute, in providing for the production of books and papers, includes not only the court and grand jury, but any tribunal or commission authorized by the State. There is nothing, as we have said, in the Federal Constitution which prevents it.

The fifth objection is also without merit, even upon the assumption that in such a case as this the company could take the objection through the witness. The court simply held that it would not determine whether the objection as to incrimination was valid until the books were produced for inspection by the court, though before they were to be used in evidence. If, after that inspection, any portion were found of that character, the court held that such portion would be excluded. As, however, the company failed and refused absolutely to produce any of the books, with some unimportant exceptions, it was adjudged to have failed to show any reasonable cause for such refusal to comply with the requirements of the notice, and it was fined for the contempt. Obviously the company could not by its refusal to produce the books thereby entirely conclude the court from any examination whatever into the sufficiency of the excuses for such nonproduction. Otherwise the company could disobey at its pleasure and so prevent any inquiry into the merits of the excuses. The statute might as well not exist if this were to be permitted.

Sixth. The objection that the notice authorized

by the statute amounted to an unreasonable search and seizure of the private books and documents of the company, is also not well founded. In *Adams v. New York*, 192 U. S. 585, where the question was raised, the court refused to discuss the contention that the Fourteenth Amendment made the provisions of the Fourth and Fifth Amendments to the Constitution of the United States, so far as they related to the right of the people to be secure against unreasonable searches and seizures, and to be protected against being compelled to testify in a criminal case against themselves, privileges and immunities of citizens of the United States, of which they could not be deprived by the action of the State, because on an examination of the record the court concluded that there had been no violation of this restriction, either in the unreasonable search and seizure or in compelling plaintiff in error to testify against himself. We are of opinion that there was no violation of such rights in the case before us, and we think it equally unnecessary to decide the question which was left undecided in the Adams case.

The objection is also made that the documents were not described with the particularity required in the description of documents necessary to a search warrant or subpoena, and that it was not a valid paper and created no obligation to obey the notice, which could form no justification for any proceeding for contempt, and was not due process of law. An examination of the notice to produce shows that the requirements of the notice, while quite broad, yet were limited to such books or papers as related to, or concerned, any dealings or business between January 1, 1904, and the date of the notice, October,

1906, with the parties named therein, who were cattle commissioners of the State of Vermont, and which papers were to be used relative to the matter of complaint pending, and then and there to be investigated by the grand jury, in which the persons named in the notice were charged with having unlawfully sold diseased meat for food purposes at Burlington. The notice also gave in detail the dates and amounts of checks and vouchers which the company was required to produce. The company refused to produce the book (with the exceptions stated), and even if the notice had been too broad, the objection cannot be urged as to the validity of the order adjudging the company guilty of contempt. *Hale v. Henkel*, 201 U. S. 43. But unless it can be said that the court or grand jury never has any right to call for all the books and papers, or correspondence, between certain dates and certain persons named, in regard to a complaint which is pending before such court or grand jury, we think the objection here made is not well founded. We see no reason why all such books, papers and correspondence which related to the subject of inquiry, and were described with reasonable detail, should not be called for and the company directed to produce them. Otherwise the State would be compelled to designate each particular paper which it desired, which presupposes an accurate knowledge of such papers, which the tribunal desiring the papers would probably rarely, if ever, have. The notice is not nearly so sweeping in its reach as in the case of *Hale v. Henkel, supra.*

Seventh. The next objection relates to the claim that the statute provides no compensation for the time, trouble and expense imposed upon a corpora-

tion in a foreign state or country in collecting and sending the documents demanded to the State of Vermont, and that it thereby takes, if enforced, private property for public use without compensation. The prohibition to that effect is found in the Fifth Amendment to the Federal Constitution. Here again we meet the question whether that amendment, because of the subsequent adoption of the Fourteenth Amendment, applies to a state proceeding, but for the reasons already stated, we do not find it expedient to discuss it here. We do not say that in any event a witness is entitled to compensation in order to avoid the above constitutional provision, but the Supreme Court in this case has held that the general law of the state, in reference to the compensation of witnesses, applied to this statute. The answer which the counsel for the company makes is that neither the statute nor the notice required the attendance of any one as a witness, but was merely an order for production for which no compensation was provided, either by the statute or under the general law. But the papers cannot walk into court of themselves, and when they are brought there by virtue of the notice to produce served on the company, and they are given to some person by the company for the purpose of such production, he has a right to be sworn as to the papers which he produces for the purposes of identification, if nothing else, and the state court has held that he is entitled as a witness to compensation.

Lastly, the objection is urged that there is an arbitrary classification in the statute, which is confined to corporations alone, and the company is thereby deprived of the equal protection of the laws secured by the Fourteenth Amendment. There is

no improper classification in this regard. It is stated by the state court that prior to the passage of this act there was no adequate provision for compelling the production of books and papers by a corporation, and it was held that the statute was designed for requiring the corporation itself, as the responsible owner and custodian, to produce the documentary evidence mentioned therein, without the necessity of calling upon bookkeepers, managers, or other servants who may, or may not, in fact, have custody and control thereof at the time notice to produce is given, and to place upon the corporation the responsibility of seeing that such evidence called for, if in its control, is produced. There is ample justification for the classification made by the statute."

The case of *Hale v. Henkel,* 201 U. S. 43, is also a direct authority against the contention of plaintiffs in error. In that case Mr. Justice Brown declared:

"The second branch of the case relates to the nonproduction by the witness of the books and papers called for by the subpoeno *duces tecum.*

Having already held that by reason of the immunity act of 1903, the witness could not avail himself of the Fifth Amendment, it follows that he cannot set up that amendment as against the production of the books and papers, since in respect to these he would also be protected by the immunity act. We think it quite clear that the search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel, through a subpoena *duces tecum,* the production, upon a trial in court, of documentary evi-

dence. As remarked in *Summers v. Moseley*, 2 Cr. & M. 477, it would be "utterly impossible to carry on the administration of justice" without this writ. The following authorities are conclusive upon this question: *Amey v. Long*, 9 East, 473; *Bull v. Loveland*, 10 Pick. 9; *U. S. Express Co. v. Henderson*, 69 Iowa, 40; *Greenleaf on Evidence*, 469a.

If, whenever an officer or employe of a corporation were summoned before a grand jury as a witness he could refuse to produce the books and documents of such corporation, upon the ground that they would incriminate the corporation itself, it would result in the failure of a large number of cases where the illegal combination was determinable only upon the examination of such papers. Conceding that the witness was an officer of the corporation under investigation, and that he was entitled to assert the rights of the corporation with respect to the production of its books and papers, we are of the opinion that there is a clear distinction in this particular between an individual and a corporation, and that the latter has no right to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he received nothing therefrom, beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law,

and in accordance with the Constitution. Among his rights are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure, except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their rights.

Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it as long as it obeys the laws of its creation. There is a reserved right in the Legislature to investigate its contracts and find out whether it has exceeded its powers. It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation, which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges.

IV.

THE CONSTRUCTION PLACED BY THE SUPREME COURT OF MISSOURI UPON THE EXTENT OF ITS JURISDICTION AND ITS STATUTORY AND CONSTITUTIONAL AUTHORITY TO BOTH DECREE A FORFEITURE OF THE FRANCHISES OF PLAINTIFFS IN ERROR AND IMPOSE A FINE, DOES NOT CONTRAVENE ANY PROVISION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The basis of plaintiff's contention in this respect is that, since the right of the Supreme Court to impose a fine is but incidental to its *quo warranto* jurisdiction and its power to oust, and since such jurisdiction cannot be exercised in cases of individuals, it operates to deny corporations the equal protection of the law and to take its property without due process of law.

There is no lack of harmony among the decisions of this court as to the fallacy of plaintiff's contention.

In discussing the anti-trust statutes of Arkansas, this court, in *Hammond Packing Company v. Arkansas*, 212 U. S. l. c. 343, said:

> "Although it be conceded that the provisions of the statute cannot consistently, with constitutional limitations, be applied to individuals, such concession would not cause the act to amount to a denial of the equal protection of the laws. The difference between the extent of the power which the State may exert over the doing of business within the State by an individual and that which it can exercise as to corporations, furnishes a distinction authorizing a classification between the two. It is

apparent that the court below, both in the Hartford case and in this, by a construction which is here binding, treated the statute, in so far as its prohibitions were addressed to individuals, as separable from its requirements as to corporations, and, therefore, even though there was a want of constitutional power to include individuals within the prohibitions of the act, that fact does not affect the validity of the law as to corporations."

Again, in the recent case of *Standard Oil Co. v. Tennessee*, 217 U. S. 1. c. 420, Mr. Justice Holmes declared:

"The basis of the former contention is that by section 3 of the act any violation of it is made a crime, punishable by fine, imprisonment, or both, and that this section has been construed as applicable only to natural persons. *Standard Oil Co. v. The State*, 117 Tenn. 618. Hence, it is said, this statute denies to corporations the equal protection of the laws. For although it is addressed generally to the prevention of a certain kind of conduct, whether on the part of corporations or unincorporated men, the latter cannot be tried without a preliminary investigation by a grand jury, an indictment or presentment, a trial by jury, the right to an acquittal unless their guilt is established beyond a reasonable doubt, and the benefit of a statute of limitations of one year. Corporations, on the other hand, are proceeded against by bill in equity on relation of the Attorney-General without any of these advantages, except perhaps the right to a jury. Complaint is not made of the difference between fine or imprisonment and ouster, but it is insisted that this is a general criminal statute, that ouster is

a punishment as much as a fine, and that it is not a condition attached to the doing of business by foreign corporations, *Carroll v. Greenwich Ins. Co.*, 199 U. S. 401, 409, or indeed a regulation of the conduct of corporations as such at all. Therefore, the plaintiff in error complains that it is given a wrongful immunity from the procedure of the criminal law. This suit is for the same transaction for which, in the earlier case cited above, an agent of the company was indicted and fined.

The foregoing argument is one of the many attempts to construe the Fourteenth Amendment as introducing a factitious equality without regard to practical differences that are best met by corresponding differences of treatment. The law of Tennessee sees fit to prevent a certain kind of conduct. To prevent it the threat of fine and imprisonment is likely to be efficient for men, while the latter is impossible and the former less serious to corporations. On the other hand, the threat of extinction or ouster is not monstrous, and yet is likely to achieve the result with corporations, while it would be extravagant as applied to men. Hence, this difference is admitted to be justifiable. But the admission goes far to destroy the argument that is made. For if a fundamental distinction may be made in the evils that different delinquents are forced to suffer, surely the less important and ancient distinction between the modes of establishing the delinquency, according to the nature of the evil inflicted, even more easily may be justified. The Supreme Court of the State says that the present proceeding is of a civil nature, but assuming that nevertheless it ends in punishment, there is nothing novel or unusual about it. We are of opinion that subjection to it,

> with its concomitant advantages and disadvantages, is not an inequality of which plaintiff in error can complain, although natural persons are given the benefit of the rules to which we have referred before incurring the possible sentence to prison, which the plaintiff in error escapes."

The contention that this procedure and its penalties deprived plaintiffs in error of their property without due process of law, is again answered in *Twining v. New Jersey*, 211 U. S. 1. c. 111:

> "Among the most notable of these decisions are those sustaining the denial of jury trial both in civil and criminal cases, the substitution of informations for indictments by a grand jury, the enactment that the possession of policy slips raises a presumption of illegality, and the admission of the deposition of an absent witness in a criminal case. The cases proceed upon the theory that, given a court of justice which has jurisdiction and acts, not arbitrarily but in conformity with a general law, upon evidence, and after inquiry made with notice to the parties affected and opportunity to be heard, then all the requirements of due process, so far as it relates to procedure in court and methods of trial and character and effect of evidence, are complied with. Thus, it was said in *Iowa Central v. Iowa*, 160 U. S. 393: 'But it is clear that the fourteenth amendment in no way undertakes to control the power of the State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted gives reasonable notice and affords fair opportunity to be heard before the issues are decided;' and in *Louisville & Nashville Railroad*

Company v. Schmidt, 177 U. S. 230, 236: 'It is no longer open to contention that the due process clause of the fourteenth amendment to the Constitution of the United States does not control mere forms of procedure in state courts or regulate practice therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend;' and in *Hooker v. Los Angeles,* 188 U. S. 314, 318: 'The fourteenth amendment does not control the power of a State to determine the form of procedure by which legal rights may be ascertained, if the method adopted gives reasonable notice and affords a fair opportunity to be heard;' and in *Rogers v. Peck,* 199 U. S. 435: 'Due process of law, guaranteed by the fourteenth amendment, does not require the State to adopt a particular form of procedure, so long as it appears that the accused has had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution.''

In case of violation of the anti trust laws by corporations, the statute and Constitution of Missouri authorize the Attorney-General to proceed by information in quo warranto, and the Constitution of that State lodges jurisdiction in such cases with the Supreme Court. Thus, in these proceedings we find a court of justice vested with complete jurisdiction over the subject-matter and the person, a form of procedure which gives the accused sufficient notice and an adequate opportunity to be heard, and a court that acts upon proper evidence and in conformity with a general law, applicable alike to all within a legitimate class. This satisfies all the re-

quirements of "due process" and affords all within a class the "equal protection of the laws."

Other cases demonstrating that plaintiff in error was not discriminated against by being put upon trial under an information in quo warranto according to the practice of the Supreme Court, are as follows:

Magoun v. Illinois Trust Co., 179 U. S. 283.

Orient Insurance Co. v. Daggs, 172 U. S. 557.

Hager v. Missouri, 120 U. S. 68.

Maxwell v. Dow, 176 U. S. 599.

The principles upon which the Supreme Court of Missouri disposed of this assignment are sound and in consonance with the doctrine announced by this court. At page 368 (Record pp. 376-377), of the opinion, the Supreme Court of Missouri, says:

> "Their position is that those sections are in violation of the first section of the fourteenth amendment to the Constitution of the United States, in that while they denounce the same acts, whether committed by individuals or individuals and corporations, they impose upon the latter a greater and different punishment from that imposed upon individuals.
>
> In one sense that may be true, but it is not true in a legal sense.
>
> A corporation is a legal fiction—a creature of the law. It accepts its charter and corporate franchises with a tacit agreement or understanding that it will exercise the powers granted to it by the State, and none other; and that if it misuses those powers, or usurps powers not so granted, it will surrender or forfeit its charter, with all corporate franchises.

That the State has the power to enforce this agreement, or law of forfeiture, is not questioned by respondents, but they insist that it is a different and greater punishment than is imposed upon an individual for the commission of the same offense. In answer to that, it may be said that an individual is a natural person, created by his Maker, and not by law, and, therefore, has no franchises to exercise or to forfeit, consequently the same punishment, if you so term it, could not, in the very nature of things, be measured out to the individual which should be measured unto a corporation.

While it is true, to forfeit the charter of a corporation for usurpation of power is equivalent to taking its life, as it were; but we suppose it will not be seriously argued that, because the statute does not demand the life of the individual, as it does that of the corporation, as a punishment for his violation of the law, the law should and must be declared unconstitutional and void upon that ground. And, upon the other hand, where a statute denounces certain acts, whether committed by individuals or corporations, or both, it should not be declared unconstitutional because it provides for imprisonment of the former and a fine, or forfeiture of the latter's charter, as punishments for their violation of the statute. But if the contention of counsel for respondents is sound, then any individual could form an unlawful combination in restraint of trade with any corporation, and when proceeded against for such unlawful conduct either one or both of them could interpose the unconstitutionality of the statute, because the punishment prescribed against each is not the same but different. And we might add that,

if their position is tenable, then the Legislature would be powerless to provide for the imprisonment of the one because it could not imprison the other; nor could it provide for the forfeiture of the charter of the corporation, because the individual would have none to forfeit, *ergo* there is no punishment the Legislature could provide, excepting a fine against each. Such a contention regarding the proposition here involved if followed to its logical conclusion would lead to an absurdity, and, at the same time, shows the unsoundness of respondents' contention.

Nor do said sections of the statute deny respondents' equal protection of the law within the meaning of the fourteenth amendment of the Federal Constitution.

It is not the object or purpose of that provision of the Constitution to prevent legislation which embraces within its provisions all persons or things which naturally and reasonably belong to the same class and similarly situated and where the statute must operate equally and uniformly upon all such persons or things of that class. (*Andrus v. Ins. Assn.*, 168 Mo. 151; *Waters-Pierce Oil Co. v. State of Texas*, 19 *Tex. Civ. App.* 14; *Railroad v. Mackey*, 127 U. S. 209; *Barbier v. Connolly*, 113 U. S. 31; *Railroad v. Mathews*, 165 U. S. 25; *Plessy v. Ferguson*, 163 U. S. 550; *Railroad v. Ellis*, 165 U. S. 150.)

The purpose of that provision was to prevent legislation which embraces within its provisions persons or things which affect only a portion of the persons or things which rationally belong to the same class and who are similarly situated. (*Railroad v. Ellis*, 165 U. S. 150.)"

V.

THE CONSTRUCTION PLACED UPON THE ANTI-TRUST LAWS OF MISSOURI THAT THEY ARE APPLICABLE TO COMMODITIES, ARTICLES AND PRODUCTS AND INAPPLICABLE TO LABOR, DOES NOT RENDER THEM OBNOXIOUS TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Supreme Court of Missouri construed the anti trust laws under review to be applicable to all commodities, articles and products of whatever nature, but not to include labor, and held that this classification was warranted.

Plaintiffs in error contend that this interpretation renders the law offensive to the fourteenth amendment in that it creates an artificial and unreasonable classification and amounts to an invidious discrimination against persons really belonging to the same class.

A.

THE DECISIONS OF THE SUPREME COURT OF MISSOURI, THAT THE REASONS FOR THE CLASSIFICATION AND THE PARTICULAR MISCHIEFS WHICH THE LEGISLATURE SOUGHT TO SUPPRESS, WERE SUFFICIENT TO WARRANT THE CLASSIFICATION, WILL NOT BE DISTURBED UNLESS SHOWN TO BE UNMISTAKABLY AND PALPABLY WRONG.

Concerning this classification, the Supreme Court of Missouri, says: (Record pp. 377-378.)

> "Nor do we agree with respondents in their contention that those statutes are violative of that

constitutional provision, in that they unjustly discriminate against property by embracing commodities only and not including labor, which, it is contended, may also become the subject of a pool or combination.

While it is true those statutes are limited in their scope and operation to persons and corporations dealing in commodities, and do not include combinations of persons engaged in labor pursuits, yet it must be bore in mind that the differentiation between labor and property is so great that they do not belong to the same general or natural classification of rights, or things, and have never been so recognized by the common law, or by legislative enactments. They stand upon entirely different footings and the laws pertaining to the one are entirely different from those pertaining to the other.

Labor has always been considered in the nature of an attribute to man, and partakes more or less of his individuality, and personal liberty, and is inseparable from his person. Labor and labor organizations are controlled and protected by laws enacted to operate largely upon the individuals personally, and not so much as upon the product of their labor, called commodities, while, upon the other hand, commodities are nothing but property, and have no personal connection with the owner whatever.

Legislation affecting property and property rights will in no manner interfere with the personnel of the owner. But that is not true of laws regarding labor, for the reason that the moment you enact laws affecting labor, that moment and by that law you affect the personnel of the laborer. I am not speaking of those laws which are enacted to secure

the wages due for labor, but I am referring to the laws that are applicable to labor itself; such as those guaranteeing to the person the right to labor, the right to contract to labor and the right to agree upon prices to be paid therefor, as well as those which prevent involuntary servitude, etc.

This classification of the laws regarding labor and property have always been recognized, by all nations, in all ages; and those laws which apply to the one have never been considered or looked upon as being special and class-legislation, because they do not embrace both.

Mr. Blackstone, in his masterly treatise upon the common law, starts out by classifying the laws into the rights of persons and the rights of things, and then he treats the laws applicable to each class separately. Our laws are in this day based upon that same classification, and this is the first time I have ever heard it contended that the laws enacted for the one class must embrace the other, otherwise the act would be unconstitutional and void.

Respondents have cited no authority sustaining their contention, and we assume there is none.

In the very nature of things a law could not be enacted which would be equally applicable to persons and things without interfering with the personnel and liberty of the laborer.

The Legislature in enacting these anti trust laws well knew of this natural classification of commodities and labor, and enacted laws only embracing the former, which in no manner deprives their owners of any of their legal or personal rights, while if they had also embraced labor combinations, they would have entrenched upon the personal rights of the laborer.

> While the Legislature might have included labor combinations, yet it did not do so, and the reason, above stated, alone was a sufficient justification for the omission to include labor combinations in the act; to say nothing regarding the general and natural classification of persons and things, which have always been recognized by the law-making powers.
>
> There is nothing new that can be said upon this subject which would throw any additional light upon it. The authorities above cited are but a few of the many which support the conclusions above stated.
>
> These sections of our statutes embrace all persons and corporations who naturally belong to the same class, and they do not arbitrarily and capriciously, without reason, divide classes or distinguish between classes existing under similar conditions."

The principle of classification is well established, its recognition and application being indispensably essential to the solution of governmental problems which come from persons in an infinite variety of relations. In solving these problems local conditions and the particular circumstances prevailing in the State where the law is to be operative, become important factors.

In dealing with these conditions and the adaptability of laws to accomplish certain desired ends, the Legislature and the State courts are peculiarly situated, they being familiar with such matters, while from the very nature and necessity of the case a like familiarity cannot be ascribed to this court.

For these reasons the judgment of the highest State court will be adhered to, unless the error thereof clearly appears.

In *Welch v. Swasey*, 214 U. S. 1. c. 105, this court, in discussing the question here presented, said:

"There is here a discrimination or classification between sections of the city, one of which, the business or commercial part, has a limitation of one hundred and twenty-five feet, and the other used for residental purposes, has a permitted height of buildings from eighty to one hundred feet." * * * *

"In passing upon questions of this character as to the validity and reasonableness of a discrimination or classification in relation to limitations as to height of buildings in a large city, the matter of locality assuming an important aspect. The particular circumstances prevailing at the place or in the State where the law is to become operative; whether the statute is really adapted, regard being had to all the different and material facts to bring about the results desired from its passage, whether it is well calculated to promote the general and public welfare, are all matters which the State court is familiar with, but a like familiarity cannot be ascribed to this court, assuming judicial notice may be taken of what is or ought to be generally known. For such reason this court, in cases of this kind, feels the greatest reluctance in interfering with the well considered judgments of the courts of a State whose people are to be affected by the operation of the law. The highest court of the State in which statutes of the kind under consideration are passed is more familiar with the particular causes which led to their passage (although they may be of a public nature), and with the general situation surrounding the subject matter of the legislation than this court can possibly be."

* * * * *

"In this case the Supreme Judicial Court of the State holds the legislation valid, and that there

is a fair reason for the discrimination between the heights of buildings in the residential as compared with the commercial districts. That court has also held that regulations in regard to the height of buildings, and in regard to their mode of construction in cities, made by legislative enactments for the safety, comfort or convenience of the people and for the benefit of property owners generally are valid. *Attorney-General v. Williams*, 174 Massachusetts, 476."

"These are matters which it must be presumed were known by the Legislature, and whether or not such were the facts was a question, among others, for the Legislature to determine."

Again, in *Southwestern Oil Co. v. Texas*, 217 U. S. 126, 127, the court reaffirms and, in fact amplifies this doctrine:

"What were the special reasons or motives inducing the State to adopt the classification of which the oil company complains, we do not certainly know, nor is it important that we should certainly know. It may be that the main purpose of the State was to encourage retail dealing in the particular articles mentioned in section 9. If the statute had its origin in such a view, we do not perceive that this court can deny the power of the State to proceed on that ground. We may repeat what was said in *Delaware Railroad Tax Cases*, 18 Wall. 206, 231; that 'it is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction.' But we will not speculate as to the motives of the State, and will assume—the statute,

either upon its face or by its necessary operation, not suggesting a contrary assumption—that the State has in good faith sought, by its legislation, to protect or promote the interests of its people. It is sufficient for the disposition of this case to say that, except as restrained by its own Constitution or by the Constitution of the United States, the state of Texas, by its legislature, has full power to prescribe any system of taxation which, in its judgment, is best or necessary for its people and government; that, so far as the power of the United States is concerned, the State has the right by any rule it deems proper, to classify persons or businesses for the purposes of taxation, subject to the condition that such classification shall not be in violation of the Constitution of the United States; that the requirement by the State, that *all* wholesale dealers in *specified articles* shall pay a tax of a given amount on their occupation, without exacting a similar tax on the occupations of wholesale dealers in *other* articles, cannot, on the face of the statute or by reason of any fact within the judicial knowledge of the court, be held, within the meaning of the fourteenth amendment, to deprive the tax payer of his property without due process of law, or to deny him the equal protection of the laws; and that the Federal court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, *or because it cannot be sure as to the precise reasons inducing the State to enact it.*"

In *McLean v. Arkansas*, 211 U. S. l. c. 547, the court again says:

"The legislature being familiar with local con-

ditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with the legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in question is unmistakably and palpably in excess of legislative power. *Jacobson v. Massachusetts*, 197 U. S. 11; *Mugler v. Kans.*, 123 U. S. 623; *Minnesota v. Barber*, 136 U. S. 313, 320; *Atkins v. Kansas*, 191 U. S. 207, 223." * * * * *

"We cannot say there was no reason for exempting from its provisions mines so small as to be in the experimental or formative state and affecting but few men, and not requiring regulation in the interest of the public health, safety or welfare. We cannot hold, therefore, that this law is so palpably in violation of the constitutional rights involved as to require us, in the exercise of the right of judicial review, to reverse the judgment of the Supreme Court of Arkansas, which has affirmed its validity."

In *Williams v. Arkansas*, 217 U. S. l. c. 90, it is said:

"When a state legislature has declared in its opinion, policy requires a certain measure, its action should not be disturbed by the court under the fourteenth amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.' *Missouri, Kansas & Texas Ry. Co. v. May*, 194 U. S. 267."

B.

THE DISTINCTION BETWEEN LABOR AND PROPERTY IS BROAD ENOUGH TO AUTHORIZE CLASSIFICATION AND SEPARATE REGULATIONS.

The equality of operation which the Constitution requires in state legislation cannot be construed as demanding an absolute universality of operation, having no regard to the different capabilities, conditions and relations of men. Classification necessarily involves inequality between members of *different* classes, but if it results in equality between the members of the same class, such equality satisfies the constitutional requirement.

As said in *Atchison & Topeka Ry. v. Matthews*, 174 U. S. 96:

> "Indeed, the very idea of classification is that of inequality, so it goes without saying that the fact of inequality in no manner determines the matter of constitutionality."

What may be regarded as a class for the purpose of separate regulations is a question not always easily determined, but labor and property are so obviously different, and so thoroughly incapable of the same regulations, that the question here involved should present but little difficulty. Laws regulating the hours of labor and the protection and employment of certain classes of laborers are quite frequent, and are universally sustained, although they apply to none other.

That labor is a class within itself and clearly distinguishable from commodities, is manifested from the fact that Con-

gress, State Legislatures and the courts now uniformly recognize the right of laboring people to organize for the purpose of fixing, advancing and maintaining their wages, and determining their hours of labor.

Eliminating certain earlier English cases, it is now well settled in this country and England that a person has the right to work for and with whom he pleases and to secure employment not only for himself, but for others, and that what he may legally do alone in this respect he may combine with any number of others to do.

Congress has expressly recognized this right by enacting a law, applicable solely to labor organizations, which makes provision for the incorporation and operation of associations of working people to regulate their wages and their hours and condition of labor.

United States Comp. Stat. (1901) p. 3204.

Almost every state in the Union has laws of a similar nature, and in no case have such laws been held invalid upon the ground that they do not include associations of those dealing in commodities, but apply alone to labor.

Independent, however, of such statutory provisions, the courts have uniformly recognized this inherent right.

In dealing with a subject very much like that now under consideration, Judge Taft, in the case of *Thomas v. Cincinnati N. O. & T. P. Rd. Co.* (C. C.) 62 Fed. 803, said:

> "That the employes of the railroad had the right to organize into or join a labor union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together, they are often able, all of them, to command better prices for their labor

than when dealing singly with rich employers, because the necessities of the single employe may compel him to accept any terms offered him. * * * They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or, if they choose to repose such authority in any one, he may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory."

In the case of *Arthur v. Oakes*, 11 C. C. A. 209, 63 Fed. 310, Mr. Justice Harlan expressed the rule thus:

> "It is the right of the employes, without reference to the effect upon the property or upon the operation of the road, to confer with each other upon the subject of the proposed reduction in wages, and to withdraw in a body from the services of the receivers, because of the proposed change. * * * If in good faith and peacefully they exercise that right of quitting the service, intending thereby only to better their condition by securing such wages as they deem just, but not to injure or interfere with the free action of others, they cannot be legally charged with any loss to the trust property resulting from their cessation of work in consequence of the refusal of the receivers to accede to the terms upon which they are willing to remain in the service."

In the case of *Hopkins v. U. S.*, 171 U. S. 578, it is held by the Supreme Court, in substance and effect, that the agreements which are condemned as in restraint of interstate commerce, do not include agreements not to work for less than a certain sum, or not to work except under certain conditions, even though the cost of interstate traffic would be thereby enhanced.

Again, in the case of *Wabash Rd. Co. v. Hannahan*, 121 Fed. l. c. 568, 569, Judge Adams said:

> "I might continue at length in the citation of cases stating or illustrating the foregoing proposition, but enough has been said to clearly indicate the general rule which may be briefly summarized as follows: An employe has an unquestionable right to place a price and impose conditions upon his labor at the outset of his employment, or, unless restrained by contract obligations, upon the continuance of his labor at any time thereafter; and, if the terms and conditions are not complied with by the employer, he has a clear right either not to engage or, having engaged, in his service, to cease from work. What one may do all may do.
>
> They may seek and obtain counsel and advice concerning their rights, duties and obligations in relation to their employer, and persons interested in their welfare may advise, aid and assist them in securing such terms and conditions of service as will best subserve their interests, and what they may lawfully do singly or together they may organize and combine to accomplish."
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> * * * * * * * * *
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> "They may, by peaceful and lawful combination and concert of action, be able to so control the supply of labor as to compel the employer to come to their terms."

Among other cases emphasizing the soundness of the doctrine just announced, are the following:

Couer D'Alene Consolidated, etc. Co. v. Miners' Union, 51 Fed. 260.

In re Higgins, 27 Fed. 443.

State v. Stockford, 77 Conn. 227.

Snow v. Wheeler, 113 Mass. 179.

Beck v. Ry. Teamsters' Protective Union, 118 Mich. 497.

Gray v. Building Trades Council, 91 Minn. 171.

Mayer v. Journeymen Stonecutters' Ass'n. 47 N. J. Equity, 519.

Nat'l Protective Ass'n. v. Cumming, 170 N. Y. 315.

Moores v. Bricklayers' Union, 10 Ohio Dec. (Reprint) 665

Long Shore Ptg. Co. v. Powell, 26 Oreg. 527.

Cote v. Murphy, 159 Pa. St. 420.

Everett Waddey Co. v. Richmond Typographical Union, 53 S. E. 273.

Reg. v. Rowland, 5 Cox C. C. 436.

When it is considered that the United States has the Sherman anti-trust law and the various states have their anti-trust, common and statutory laws prohibiting the determination, regulation and maintenance of the prices of *commodities*, the cases heretofore cited, sustaining the right of laborers to combine for the purpose of fixing, regulating and maintaining the prices and wages of *labor*, demonstrate that the distinction between labor and commodities is so great as to admit of separate, distinct and even directly opposite regulations.

It is true that the Federal courts have held the Sherman anti-trust law applicable when labor unions resort to force, intimidation, threats and "boycott," but no such question as that is involved here and was neither presented to nor passed upon by the State court. In such a case the State court could, under its present system of laws, grant relief.

United States v. Debs, 158 U. S. 564.

These decisions of the Federal courts, holding the Sherman act applicable to labor organizations under certain circumstances give not the slightest intimation that the act would be invalid if the language used were so limited as not to be susceptible of the construction that it is applicable to labor in the cases mentioned. On the contrary, the discussion of the meaning and application of the act, and the process of reasoning applied in arriving at the conclusion that the same is applicable under such conditions, are based upon the postulate that such laws do not necessarily have to include labor.

United States v. Debs, 64 Fed. l. c. 724-755. Affirmed, 158 U. S. 564.

U. S. v. Workingmen's Amalgamated Council, 54 Fed. 994.

Loewe v. Lawlor, 208 U. S. 274.

The classification here complained of is based upon reasonable grounds and upon obvious differences in existing conditions. The statute applies alike to all persons who deal in articles, products and commodities. No discrimination is shown in favor of one as against another. It does not select particular individuals from a class or locality and subject them to peculiar rules or impose upon them certain obligations and burdens from which others in the same locality or

class are exempt. A few cases showing the large latitude allowed to the states for the purpose of classification, and sustaining the validity of the statute under review, will be considered.

In *Williams v. Arkansas*, 217 U. S. l. c. 79, it was held that a statute prohibiting drumming or soliciting business on trains for hotels and medical practitioners was not unconstitutional, because it relates to such classes alone, and does not prohibit drumming or soliciting for other purposes.

In *Pacific Express Company v. Seibert*, 142 U. S. 339, a state statute defining an express company to be such as carried on the business of transportation on contracts for hire, with *railroad* and *steamboat* companies, did not invidiously discriminate against the express companies defined by it by exempting other companies carrying express matter in vehicles of their own.

This court, in *McLean v. Arkansas*, 211 U. S. 545, sustained a statute which divided coal mines into those where less than ten are employed and those where more than that number are engaged, and held that such classification was warranted.

The recent decision of this court in case of *Southwestern Oil Co. v. Texas*, 217 U. S. 114 (l. c. 121), ably discusses this question and reviews a number of cases relating thereto.

In that case the court says:

> "But it is contended that the statute contravenes the Fourteenth Amendment, in that it denies to the Oil Company the equal protection of the laws. This position is based mainly on the ground that the statute by imposing a tax on *wholesale* dealers in coal oil, naphtha, benzine, mineral oils refined from petroleum, and all other mineral oils, while omitting to put any such tax whatever on wholesale

dealers in other articles of merchandise—such, for instance, as sugar, bacon, coal and iron—so discriminates against wholesale dealers in the several articles specified in section 9 as to deny them the equal protection of the laws. This view gives to the amendment a scope that could not have been contemplated at the time of its adoption. The tax in question is conceded to be an occupation tax simply. It was imposed under the authority of the State Constitution, providing that the Legislature may impose occupation taxes, both upon natural persons and occupations other than municipal, doing any business in the State, * * * except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax. It is not questioned that the State may classify occupations for purposes of taxation. In its discretion it may tax all, or it may tax one or some, taking care to accord to all *in the same class* equality of rights. The statute in respect of the particular class of wholesale dealers mentioned in it is to be referred to the governmental power of the State, in its discretion, to classify occupations for purposes of taxation. The State, keeping within the limits of its own fundamental law, can adopt any system of taxation or any classification that it deems best by it for the common good and the maintenance of its government, provided such classification be not in violation of the Fourteenth Amendment.

A leading case on the general subject is *Bell's Gap Rd. Co. v. Pennsylvania,* 134 U. S. 232, 237. In that case a question arose as to whether a statute of Pennsylvania, subjecting bonds and other securities issued by corporations, to a higher rate of taxation than was imposed on other moneyed securities,

was a denial of the equal protection of the laws to corporations. This court held that there was no discrimination which the State was not competent to make, saying: 'All corporate securities are subject to the same regulations. The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may imposes different specific taxes upon different trades and professions, and may vary the rate of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usages, are within the discretion of the State Legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are safe in saying that the Fourteenth Amendment was not intended to compel the State to adopt an iron

rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require, which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt.'

In *Home Ins. Co. v. New York*, 134 U. S. 594, involving the constitutional validity of a law taxing corporate franchises and business, the court held that the statute was not a denial of the equal protection of the laws. It said that the amendment 'does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation, and another kind of property to a different rate—distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it. And when such legislation applies to artificial bodies, it is not open to objection if all such bodies are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected. Under the statute of New York all corporations, joint stock companies and associations of

the same kind are subjected to the same tax. There is the same rule applicable to all under the same conditions in determining the rate of taxation. There is no discrimination in favor of one against another *of the same class.*'

So, in *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 562: 'A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling, unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare involved in the necessity of taxation for the support of the state. A state may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the Constitution of the United States.'

There are many other cases in which the court considered the meaning and scope of the constitutional guaranty of the equal protection of the laws. We will refer to a few of them.

In *Kentucky Railroad Tax Cases*, 115 U. S. 321, 337, the court sustained, as not inconsistent with the equal protection clause of the Fourteenth Amendment, a Kentucky statute providing for the assessment of railroad property for purposes of taxation in a mode different from that prescribed as to ordinary real estate, or as to the property of cor-

porations chartered for other purposes, such as bridge, mining, street railway, manufacturing, gas and water companies. It said that 'the rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of *each class*, so that the law shall operate equally and uniformly upon all persons *in similar circumstances*. There is no objection, therefore, to the discrimination made as between railroad companies and other corporations in the method and instrumentalities by which the value of their property is ascertained.' In *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 294, which involved the constitutionality of an inheritance tax law, the court recognized the power of the state to 'distinguish, select and classify objects of legislation' by laws which did not violate the settled usages and established practices of our government. In *American Sugar Refining Company v. Louisiana*, 179 U. S. 89, a state enactment, imposing a license tax on the business of refining sugar and molasses, was held not to be a denial of the equal protection of the laws, because of the exemption from such tax of planters and farmers who ground and refined their own sugar and molasses. In *W. W. Cargill Company v. Minnesota*, 180 U. S. 452, a statute requiring a license to operate a warehouse for the receipt of grain, located upon the right of way of a railroad, but which did not require a license as to a similar warehouse not located on any right of way, was not a denial of the equal protection of the laws to the first-named class. In *Cook v. Marshall Co.*, 196 U. S. 268, which involves the validity of a cigarette tax law that made a distinction between

jobbers and wholesale dealers in cigarettes, the court said: 'There is a clear distinction in principle between persons engaged in selling cigarettes generally or at retail, and those engaged in selling by wholesale to customers without the state. They are two entirely distinct occupations. One sells at retail and the other at wholesale, one to the public generally and the other to a particular class; one within the state, the other without. From time out of mind it has been the custom of Congress to impose a special license tax upon wholesale dealers different from that imposed upon retail dealers. A like distinction is observed between brewers and rectifiers, wholesale and retail dealers in leaf tobacco and liquors, manufacturers of tobacco and manufacturers of cigars, as well as peddlers of tobacco. It may be difficult to distinguish these several classes in principle, but the power of Congress to make this discrimination has not, we believe, been questioned.' In *Armour Packing Co. v. Lacy*, 200 U. S. 226, a State law, imposing a license tax on meat packing houses, did not deny the equal protection of the laws to persons or corporations engaged in such business, because a like tax was not imposed on persons engaged in the business of selling the products of such houses, or on those engaged in packing articles of food other than meat.

In our judgment, the objection that within the true meaning of the Fourteenth Amendment the statute of Texas has the effect to deny to the oil company the equal protection of the laws does not rest upon any solid basis. The statute makes no distinction among such wholesale dealers as handle *the particular articles specified* in section 9. The

> state had the right to classify such dealers *separately* from those who sold, by wholesale, other articles than those mentioned in that section. The statute puts the constituents of *each of those separate classes* on the same plane of equality. It is not arbitrary legislation, except in the sense that all legislation is arbitrary. If it be within the power of the legislature to enact the statute, then arbitrariness cannot be predicated of it in a court of law. And it cannot be held to be beyond legislative power simply because of its classification of occupations." * * *
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> So far as the power of the United States is concerned, the State has the right, by any rule it deems proper, to classify persons or businesses for the purposes of taxation, subject to the condition that such classification shall not be in violation of the Constitution of the United States; that the requirement by the state, that *all* wholesale dealers in *specified articles* shall pay a tax of a given amount on their occupation, without exacting a similar tax on the occupations of wholesale dealers in *other articles*, cannot, on the face of the statute or by reason of any facts within the judicial knowledge of the court be held, within the meaning of the Fourteenth amendment."

In *Brown-Forman Co. v. Ky.*, 217 U. S. 563, this court sustained the validity of a statute which placed an occupation tax upon all distillers who compounded, rectified or blended distilled spirits, but which exempted distillers and rectifiers of straight distilled liquors.

In that case it is said:

> "We come then to the question as to whether this act makes an arbitrary and illegal discrimi-

nation in favor of other persons or corporations engaged in the same business. The question is at last one of classification of subjects, trades or pursuits for the purpose of taxation, and concerns the power of the states to exercise discretion in the methods, subjects and rates of taxation. Fundamental to the very existence of the governmental power of the states as is this function of taxation, it is nevertheless subject to the beneficial restriction that it shall not be so exercised as to deny to any the equal protection of the law. But this restriction does not compel the adoption of 'an iron rule of equal taxation,' nor prevent variety in methods of taxation or discretion in the selection of subjects, or classification for purposes of taxation of either properties, businesses, trades, callings or occupations. This much has been over and over announced by this court. *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. 232; *Cargill Co. v. Minnesota*, 180 U. S. 452; *Missouri, Kansas & Texas Railway Co. v. May*, 194 U. S. 267; *Cook v. Marshall County*, 196 U. S. 268; *Williams v. Arkansas*, 217 U. S. 79; *Southwestern Oil Co. v. State of Texas*, 217 U. S. 114." * *

"Plaintiff in error now says that it has been arbitrarily singled out and its business or occupation taxed, thereby discriminating in favor of 'three other classes engaged in the same business.'" * * *

"A very wide discretion must be conceded to the legislative power of the State in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulation or taxation through an excise or license tax. If the selection or classification is neither capricous nor arbitrary, and rests upon some reasonable con-

sideration of difference or policy, there is no denial of the equal protection of the law."

In *Armour Packing Company v. Lacy*, 200 U. S. 227, a statute of North Carolina imposing a license tax on meat packing houses and exempting persons engaged in packing articles of food other than meat, as well as persons not doing a meat packing business, but selling the products thereof, was declared valid. In that case the court says:

> "As we have frequently held, the State has the right to classify occupations and to impose different taxes upon different occupations. Such has been constantly the practice of Congress under the internal revenue laws. *Cook v. Marshall County*, 196 U. S. 261, 275. What the necessity is for such tax, and upon what occupations it shall be imposed, as well as the amount of the imposition, are exclusively within the control of the State Legislature. So long as there is no discrimination against citizens of other states, the amount and necessity of the tax are not open to criticism here. 197 U. S. 69.
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> This practically disposes of the fourth and fifth contentions, since the classification of meat packing houses cannot be said to be an arbitrary selection or not to rest on reasonable grounds, and the Fourteenth Amendment was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways, or through the undoubted power of classification to impose different taxes upon different trades and professions.
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> 'A tax may be imposed only upon certain callings and trades, for when the state exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable bur-

den if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings.' *Connolly v. Union Sewer Pipe Company*, 184 U. S. 540, 562.

And see *Cargill Co. v. Minnesota*, 180 U. S. 452; *Kidd v. Alabama*, 188 U. S. 730; *Savannah, Thunderbolt, &c. Ry. Co. v. Savannah*, 198 U. S. 392; *Minnesota Iron Co. v. Kline*, 199 U. S. 593; *Cable v. United States Life Insurance Company*, 191 U. S. 288, 307.

By the act under consideration the tax is levied upon every packing house doing business in the state, which includes by its terms both domestic and foreign meat-packing houses. It is true that it appears that where the Armour Packing Company does business certain persons sell both by wholesale and retail packing-house products, and yet are not subjected to this tax, but also that those parties are not doing either in North Carolina or elsewhere a packing-house business. And so it appears that in North Carolina, at the points where the Armour Packing Company is engaged in business, and at other places in the state, there are establishments engaged in business, which pack articles of food other than meats, such as peas, beans, pumpkins, etc., and offer them for sale; but we cannot accept the suggestion that the statute is void as denying the equal protection of the laws to meat packing houses because houses packing vegetables and the like are not included in the same classification and subject to the same tax."

In *Clark v. Titusville*, 184 U. S. 330, the court held that ordinances imposing a license tax upon the merchants of the city by which they were divided into classes according to the

amount of their sales, each class including all whose sales ranged between a certain maximum and minimum amount, do not violate the equality clause of the United States Constitution, although the result is to make persons in *different classes pay different rates* and to make those in the *same class* pay at a *different* ratio, if the amount of their sales differ. If a city or state has the right to classify in that manner and for revenue purposes, as in that case, they certainly have the right to classify for police regulation or license tax purposes. If there is any difference in the principles of classification, with reference to matters of revenue and regulation or license tax, stricter uniformity is required in the matter of revenue.

In *Cook v. Marshall County,* 196 U. S. 261, it was held that the classification by statute in which a distinction is made between wholesale and retail dealers and imposing a tax on cigarette dealers is not invalid because it does not apply to jobbers and wholesalers doing a cigarette business with customers outside of the state.

In upholding that statute, the court said:

> "From time out of mind it has been the custom of Congress to impose a special license tax upon wholesale dealers different from that imposed upon retail dealers. A like distinction is observed between brewers and rectifiers, wholesale and retail dealers in leaf tobacco and liquors, manufacturers of tobacco and manufacturers of cigars, *as well as peddlers of tobacco.* It may be difficult to distinguish these several classes in principle, but the power of Congress to make this discrimination has not, we believe, been questioned.
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> Why the legislature should have made the distinction found in section 5007 is not entirely clear."
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> * * *

> "We are satisfied the section is not open to the objection of denying to the dealers in cigarettes the equal protection of the laws."

In *American Sugar Refining Co. v. La.*, 179 U. S. 89, this court held that a state statute imposing a license tax upon persons and corporations carrying on the business of refining sugar and molasses does not, by exempting from such tax all planters and farmers grinding and refining their own sugar and molasses, deny sugar refineries the equal protection of the laws within the meaning of the Fourteenth Amendment.

In that case it is said:

> "The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle, is valid. Of course, if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as taxpayers, such exemption would be pure favoritism and a denial of the equal protection of the laws to the less favored classes. But from time out of mind it has been the policy of this government, not only to classify for purposes of taxation, but to exempt producers from the taxation of the methods employed by them to put their products upon the market."
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> * * *
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> "Congress, too, has repeatedly acted upon the principle of the Louisiana statute. Thus, after having imposed by act of August 2, 1813, a license tax upon the retailers of wines and spirits, for the pur-

pose of providing for the expense of the war with Great Britain, it was further enacted by an act of February 8, 1815, c. 40, 3 Stat. 205, that it should not be construed 'to extend to vine dressers who sell at the place where the same is made, wine of their own growth, nor shall any vine dresser for vending solely where the same is made, wine of his own growth, be compelled to take out a license as a retailer of wines.' So, too, in the Internal Revenue Act of July 1, 1862, c. 119, 12 Stat. 432, a license tax was imposed (sec. 64) upon retail dealers in all goods, wares and merchandise, but with a proviso in section 66, that the act should not be construed 'to require a license for the sale of goods, wares and merchandise made or produced and sold by the manufacturer or producer at the manufactory or place where the same is made or produced; to vinters who sell, at the place where the same is made, wine of their own growth; nor to apothecaries, as to wines or spirituous liquors which they use exclusively in the preparation or making of medicines for lame, sick or diseased persons.' Another paragraph of the same section (64) exempts distillers who sell the products of their own stills from a tax as wholesale dealers in liquors. While no question of the power of Congress is involved, these instances show that its general policy does not differ from that of the act in question, and that the discrimination is based upon reasonable grounds.

So, too, this court has had repeated occasion to sustain discriminations founded upon reasons much more obscure than this."

In *W. W. Cargill Co. v. Minn.*, 180 U. S. 452, this court held that a state statute which applied only to warehouses

located *on* the right of way of a railroad was not invalid by reason of its non-application to warehouses *not* situated on such rights of way.

In holding this classification to be reasonable, and that it did not amount to a denial of the equal protection of the laws, the court said:

> "Thus considering the statute we are of opinion that the mere requirement of a license from a person, firm or corporation engaged in such business as that conducted by the defendant is not forbidden by the Fourteenth Amendment of the Constitution of the United States. 'The liberty mentioned in that Amendment,' we have said, 'means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.' *Allegeyer v. Lousiana*, 165 U. S. 578, 589. But to require the defendant company to obtain a license is not forbidden by the Amendment. The authority to make such a requirement is to be referred to the general power of the state to adopt such regulations as are appropriate to protect the people in the enjoyment of their relative rights and privileges, and to guard them against fraud and imposition. *Dent v. West Virginia*, 129 U. S. 114, 122; *Plumley v. Mas-*

sachusetts, 155 U. S. 461. The state court well said that the defendant's warehouse could be fairly regarded 'as a sort of public market where the farmers come with their grain for the purpose of selling the same, and where the purchaser, a party in interest, acts as marketmaster, weighmaster, inspector and grader of the grain.'

We cannot question the power of the state, so far as the Constitution of the United States is concerned, to require a license for the purpose of carrying on business of that character within its limits—such a license not being required for the purpose of forbidding a business lawful or harmless in itself, but only for purposes of regulation."

* * * * * * *

"If in the judgment of the state it was necessary for the public interests, or beneficial to the public, that elevators and warehouses of the kinds described should be operated only under a license and under such regulations as may be rightfully prescribed, it would be going very far to hold that such a classification was so unreasonable as to justify us in adjudging that the requirement of a license was void as denying the equal protection of the laws. No such judgment could be properly rendered unless the classification was merely arbitrary or was devoid of those elements that are inherent in the distinction implied in classification. We cannot perceive that the requirement of a license is not based upon some reasonable ground—some difference that bears a proper relation to the classification made by the statute. *Gulf, Col. & Santa Fe Ry. v. Ellis*, 165 U. S. 150, 165."

In *Barbier v. Connolly*, 113 U. S. l. c. 32, it is again declared that:

> "Class legislation discriminating against some and favoring others is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In *Missouri Railway Co. v. Mackey*, 127 U. S. l. c. 209, the court says:

> "And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions. A law giving to mechanics a lien on buildings constructed or repaired by them, for the amount of their work, and a law requiring railroad corporations to erect and maintain fences along their roads, separating them from land of adjoining proprietors so as to keep cattle off their tracks, are instances of this kind. Such legislation is not obnoxious to the last clause of the Fourteenth Amendment, if all persons subject to it are treated alike under similar circumstances and conditions in respect both of the privileges conferred and the liabilities imposed."

In *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. l. c. 232, the court says:

> "The provision in the Fourteenth Amendment that no state shall deny to any person within its jurisdiction the equal protection of the laws was

not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them."

Deeming it needless to further discuss the validity of the Missouri Anti-Trust Laws, and the correctness of the judgment in these cases, we respectfully ask that the writ of error be dismissed and that the judgments be affirmed.

All of which is respectfully submitted,

ELLIOTT W. MAJOR,
Attorney-General,
CHARLES G. REVELLE,
Asst. Attorney-General,
Attorneys and Counselors for Defendant in Error.

APPENDIX.

CHAPTER 143, REVISED STATUTES OF MISSOURI, 1899, RELATING TO POOLS, TRUSTS AND CONSPIRACIES.

Article I.

Sec. 8965. Pools, trusts, etc., defined—penalty. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this State, or which does transact or conduct any kind of business in this State, or any partnership or individual or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy

to defraud, and be subject to penalties as provided *in this article; and provided,* that if such insurance companies or their agents or the board of fire underwriters doing business in any city of this State, shall combine in any city of this State, either directly or indirectly, or agree or attempt to agree, directly or indirectly, to fix or regulate the price or premium to be paid for insuring property located within or outside of such city against loss or damage by fire, lightning or storm, such company so violating the provisions of this article, either by itself, its agents, or by any such board of underwriters, shall be taken and deemed to have forfeited its right to do business in this State, and shall become liable to all the penalties and forfeitures provided for by the provisions of this article. (Laws 1891, p. 186, amended, Laws 1895, p. 237, amended, Laws 1897, p. 208, amended.)

Sec. 8966. Certain agreements declared unlawful.—That from and after the passage of this article, all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons and corporations designed or made with a view to lessen, or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this State, and all arrangements, combinations, contracts or agreements, whereby, or under the terms of which, it is proposed, stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this State, shall deal in, sell or offer for sale in this State, any particular or specified article, product or commodity, and shall not during the continuance or existence of any such arrangement,

combination, contract or agreement, deal in, sell or offer for sale in this State, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons or corporation becoming a party to any such arrangement, contract, agreement or combination, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties provided for in this article. (Laws 1897, p. 208.)

Sec. 8967. Trust certificates, etc., declared unlawful.—It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Laws 1891, p. 186.)

Sec. 8968. Penalty.—Any corporation or company, individual, firm or association violating any of the provisions of this article, shall forfeit not less than five dollars nor more than one hundred dollars *for each day* it shall continue to do so, to be recovered by an action in the name of the State, at the relation of the Attorney-General, circuit or

prosecuting attorney—money thus recovered to go into the school fund of the county in which the cause accrues, and in the city of St. Louis into the school fund of said city. (Laws 1891, p. 186, amended, Laws 1895, p. 237.)

Sec. 8971. Forfeiture of charter by corporation.—Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this article, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof thereof being made in any court of competent jurisdiction in this State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any of the preceding sections of this article, shall thereby forfeit its rights and privileges thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in this State, its right and privilege to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as the agent of such foreign corporation in transacting its business in this State has been, while acting as such agent, and in the name, behalf or interest of such foreign corporation violating any provision of the preceding sections of this article, shall be received as prima facie proof of the act of the corporation itself, and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, also to the Superintend-

ent of the Insurance Department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation. (Laws 1891, p. 186, amended, Laws 1895, p. 237.)

Sec. 8972. Unlawful for corporation to transact business after forfeiting charter.—That whenever the corporate rights and franchises of any corporation organized under the laws of this State have declared forfeited by the judgment of a court of competent jurisdiction for any violation of the provisions of this article, and whenever the right and privilege of any corporation organized under the laws of any other state or country to do business in this State has been declared forfeited by the judgment of a court of competent jurisdiction for any violations of the provisions of this article, it shall thereafter be unlawful for any person, association of persons or corporation, to deal in, sell or offer for sale in this State, any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation, whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successors or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and jail imprisonment: Pro-

vided, that no statement made by any person in any affidavit made under the provisions of sections 8973 and 8974 of this article shall be competent as evidence against such person in any criminal prosecution brought under this section. (Laws 1897, p. 208.)

Sec. 8975. Article to be enforced, by whom.—It shall be the duty of the Attorney-General, the circuit attorney of the city of St. Louis and the prosecuting attorney of each county, respectively, to enforce the provisions of this article. The Attorney-General, the circuit or prosecuting attorneys shall institute and conduct all suits begun in the circuit courts, and upon appeal the Attorney-General shall prosecute said suits in the Supreme Court and courts of appeals. As compensation for his services in this behalf, the Attorney-General shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the State. The circuit and prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected. (Laws 1891, p. 186, amended, Laws 1895, p. 237.)

Article II.

Sec. 8978. Agreement to regulate prices, control or limit trade, declared illegal.—Every pool, trust, agreement, combination, confederation or understanding, conspiracy or combination entered into, or created, or organized by any corporation organized under the laws of this or any state, or any partnership or individual or other association of persons whatsoever with any other corporation, partnership, individual or any other person or association of per-

sons to regulate, control or fix the price of any article or articles of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining of any kind or class, or any article or thing of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price or prices when so regulated, determined or fixed, and all agreements, combinations, confederations or conspiracies or pools made, created, entered into or organized by any corporation, partnership, individual, or association of individuals, to fix the amount or limit the quantity of any article or thing whatsoever, or of any article of manufacture, mechanism, commodity, convenience or repair, or any product of any class or kind of mining, are hereby declared illegal. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade, by refusing to buy from or to sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or party to such pool, trust, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement,

combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this article. (New section.)

Sec. 8979. Jurisdiction of offenses—duty of Attorney-General and prosecuting attorneys.—The several circuit courts of this State are hereby vested with jurisdiction to prevent and restrain any corporation, partnership, individual or association of individuals from entering into any combinations, pools, agreements in the form of trusts, confederation, conspiracy or understanding declared illegal by this article or any other law of this State relative to pools, trusts and conspiracies and unlawful combinations. And it shall be the duty of the Attorney-General and of the prosecuting attorneys, when so directed by the Attorney-General, to institute proceedings in equity to prevent and restrain all violations of this act and of any other law concerning pools, trusts and conspiracies and unlawful combinations. Such proceedings may be by way of petition, setting forth the case and praying that such violation be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. (New section.)

Sec. 8982. Purpose of this article.—It is hereby expressly declared to be the intent of this article, not to repeal any former act or part thereof on the subject of pools, trusts, conspiracies and unlawful combinations, except the same be in direct and irrecon-

cilable conflict herewith. And it is hereby declared to be only the express purpose of this article to provide an additional remedy for the control and restraint of pools, trusts and conspiracies in restraint of trade and unlawful combinations. (New section.)

Article III.

Sec. 8983. Taking testimony in proceedings under this chapter.—Whenever any proceedings shall be commenced in any court of competent jurisdiction in this State by the Attorney-General against any corporation or corporations, individual or individuals or associations of individuals, or joint-stock associations or co-partnership, under the law against the formation and maintenance of pools, trusts of any kind, monopolies in commodities, combinations or organizations in restraint of trade to dissolve the same or to restrain their formation or maintenance in this State, then in such case, if the Attorney-General desires to take the testimony of any officer, director, agent or employe of any corporation or joint-stock association proceeded against, or in case of a copartnership, any member of said partnership, or any employe thereof, in any court in which said action may be pending, or before any person duly authorized by any court to take testimony in any such action, and the individual or individuals whose testimony is desired, are without the jurisdiction of the courts of this State, or reside without the State of Missouri, then, in such case, the Attorney-General shall file in said court in term time, or in vacation, or with any person duly authorized to take the testimony in such case, a statement, in writing, setting forth the name or names of

the persons or individuals whose testimony he desires to take and the time when, and the place in the State where he desires the said persons to appear; and, thereupon, the court in which, or one of the judges thereof, or the person before whom testimony is being taken, shall issue immediately a notice, in writing, directed to the attorney or attorneys of record in said cause, or any agent, officer, or employe of any corporation, joint-stock association or copartnership which are parties to said action, notifying said attorneys of record, or officer, agent or employe that the testimony of the person or persons named in the application of the Attorney-General is desired, and requiring said attorney or attorneys of record, or said officer, agent or employe, to whom said notice is delivered, or upon whom the same is served, to have said officer, agent, employe or representative of said copartnership or agent thereof whose evidence it is desired to take at the place named in the application of the Attorney-General and at the time fixed in said application, then and there to testify: Provided, however, that the said application shall always allow, in fixing said time, the same number of days for travel to reach the designated point in Missouri that would now be allowed by law in case of taking depositions: Provided, also, in addition to the above named time, six days shall be allowed for the attorney or attorneys of record, or the agent, officer or employe on whom notice is served to notify the person or persons whose testimony is to be taken. Service of said notice and the return thereon, in writing, may be made by any one authorized by law to serve a subpoena. (New section.)

Sec. 8984. Proceedings upon failure to testify or to produce books, papers, etc.—Whenever any attorney or attorneys of record, or any agent, officer or employe of any such corporation, joint-stock association or copartnership, shall be notified as above provided, to request any officer, agent, director or employe to attend before any court, or before any person authorized to take the testimony in said proceeding, and the person or persons whose testimony is requested, as above provided, shall fail to appear and testify and produce whatever books, papers and documents they may be ordered to produce by the court, or the officer authorized to take said evidence, then it shall be the duty of the court, upon motion of the Attorney-General, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding, by said corporation, joint-stock association or copartnership, whose officer, agent, director or employe has neglected or failed to attend and to testify and produce all books, papers and documents he or they shall have been ordered to produce in said action by the court or person authorized to take said testimony; and said court shall proceed to render judgment by default against said corporation, joint-stock association or copartnership. (New section.)

Sec. 8985. Ibid.—And it is further provided, that in case any officer, agent, employe, director, or representative of any corporation, joint-stock association or copartnership in such proceeding as hereinbefore mentioned, who shall reside or be found within this State shall be subpoenaed to appear and testify or to produce papers, books and documents, and shall fail, neglect or refuse to do so,

then the answer, motion, demurrer, or other pleading then or thereafter filed by said corporation, joint stock association or copartnership in any such proceeding shall, on motion of the Attorney-General, be stricken out and judgment in said cause rendered against said corporation, joint-stock association or copartnership. (New section.)

V

Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 47.

STANDARD OIL COMPANY OF INDIANA,
PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR,
ATTORNEY-GENERAL, DEFENDANT IN ERROR.

No. 48.

REPUBLIC OIL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI ON THE INFORMATION OF ELLIOTT W. MAJOR,
ATTORNEY-GENERAL, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

ELLIOTT W. MAJOR,
Attorney-General;
CHARLES G. REVELLE,
Assistant Attorney-General;
Attorneys and Counselors for Defendant in Error.

(21,665 and 21,666.)

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Statement.

This honorable court is without jurisdiction to review the judgment of the Supreme Court of Mis-

souri in these cases. The Attorney-General of Missouri, by his information in *quo warranto,* proceeded jointly against the Standard Oil Company of Indiana, the Republic Oil Company, and the Waters-Pierce Oil Company for having violated the anti-trust laws of that State by having entered into an agreement, arrangement, and combination among themselves to regulate, fix, and control the price of oils and to control and limit the trade and to limit and prevent competition.

The Supreme Court of Missouri found them guilty as charged and rendered one judgment against the said three companies. The *license* of the Standard Oil Company of Indiana and the Republic Oil Company to do business in Missouri (the Standard being an Indiana corporation and the Republic a New York corporation) was declared and adjudged forfeited, and the *charter* of the Waters-Pierce Oil Company (it being a Missouri corporation) was adjudged forfeited.

The court, in addition to forfeiting the *license* of the Standard Oil Company and the Republic Oil Company and the *charter* of the Waters-Pierce Oil Company, also imposed a fine on *each* of said three companies of $50,000.00.

Upon the Waters-Pierce Oil Company paying its fine of $50,000.00, the Supreme Court *suspended* the judgment of ouster in so far as said judgment applied to it, and retained jurisdiction over the case and said Waters-Pierce Oil Company, so

that it might, *at any time thereafter,* make said judgment of ouster *absolute.*

The Standard Oil Company of Indiana and the Republic Oil Company come to this court upon writ of error.

This honorable court does not take jurisdiction of the writs and cannot therefore consider the cases because the writs are defective, there being no severance.

This court will not take jurisdiction of the writs, because plaintiffs in error, who wished the benefit of same, did not summon the Waters-Pierce Oil Company before the court and secure an order or judgment of severance; neither did plaintiffs in error give written notice to, and secure a refusal to join in said writs of error from, said Waters-Pierce Oil Company.

For these failures upon the part of plaintiffs in error this court will not take jurisdiction and will not, therefore, consider the cases, and the said writs must be dismissed.

Judgment.

For the convenience of the court we here print the judgment rendered against the said three companies by the Supreme Court of Missouri (Printed Record, pp. 437-38-39).

"STATE OF MISSOURI *ex Information* HENRY S. HADLEY, *Attorney-General, Informant,*

vs.

"'STANDARD OIL COMPANY' OF INDIANA, 'REPUBLIC OIL COMPANY' OF NEW YORK *and* 'WATERS-PIERCE OIL COMPANY' OF MISSOURI, *Respondents.*

"And now, on this day, this court having fully considered the evidence in this cause, and announced and filed its opinion that the said respondents and each of them are guilty as charged in the information of the Attorney-General of a violation of the statute of this State, entitled, 'Pools, Trusts, and Conspiracies; Unlawful Combinations, Approved March 24th, 1877,' and an Act of the General Assembly of this State, approved April 2d, 1891, entitled, 'An act providing for the punishment of pools, trusts, and conspiracies to control prices and as to evidence and prosecution in such cases,' and now known as chapter 143 of the Revised Statutes of Missouri, 1899, come now the State of Missouri, by Herbert S. Hadley, the Attorney-General, and the said respondents by their respective counsel, and it is now here considered, ordered, and adjudged by the court, that the said respondents, and each of them, are guilty of violating the said acts of the General Assembly of this State, in that at the dates and times set forth in the information of the Attorney-General, they did form and enter into a pool, trust, combination, and conspiracy, to regulate, fix, and control the prices to be paid by retail dealers and others

in the State of Missouri, for naphtha, benzine, gasoline, kerosene, lubricating oil, and other products of petroleum, and to control and limit the trade in the articles aforesaid, and to prevent competition in said business of buying and selling naphtha, benzine, gasoline, kerosene, lubricating oil, and other products of petroleum, in this State, between themselves and others engaged in like business and to deceive and mislead the public, and did control, fix, and maintain the prices for said articles, and have prevented and destroyed competition in the purchase and sale of said products of petroleum in this State as charged in the information, and thereupon, it is considered, ordered and adjudged by the court that by reason of the violation of said statutes of this State, in forming and entering into and maintaining said unlawful combination, conspiracy, and pool, the said Standard Oil Company organized under the laws of the State of Indiana, and heretofore licensed to do business in this State, and the said Republic Oil Company, organized under the laws of the State of New York, and licensed to do business in this State, have each and both forfeited their respective licenses heretofore granted them by the Secretary of State of Missouri, and it is further considered, ordered, and adjudged, that said license of the said Standard Oil Company of Indiana, and the said license of the said Republic Oil Company of New York, be and the same are hereby forever forfeited, annulled, and cancelled, and the said Standard Oil Company of Indiana and the said Republic Oil Company of New York, are hereby ousted of

any and all rights and franchises granted to them under the laws of this State, to further do business in this State, and it is further considered and ordered and adjudged that the said 'Standard Oil Company' of Indiana and the said 'Republic Oil Company' of New York, each for the violation aforesaid of the laws of this State, in forming, entering into, and maintaining the conspiracy and combination to regulate, control, and fix the prices of said products of petroleum in this State, and to control and limit the trade in said products in this State and to prevent competition in said business, be fined fifty thousand dollars, and that each of said respondents, the said Standard Oil Company of Indiana, and the said Republic Oil Company of New York, pay each the said sum of fifty thousand dollars to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of the State, and upon default and failure so to do, that the State of Missouri have execution therefor, to be levied and enforced according to the laws of this State, in such cases made and provided, and it is further considered, ordered, and adjudged by the court, that the said respondent, the said 'Waters-Pierce Oil Company,' by its violation of the said laws and statutes of this State, against 'pools, trusts, and conspiracies,' and known as chapter 143 of the Revised Statutes of Missouri, 1899, has forfeited its charter to do business in this State, and it is therefore considered, ordered, and adjudged by the court, that the right and franchises heretofore granted to said Waters-Pierce Oil Company, to be a

body corporate and to do business and contract as such, with all other rights acquired by its certificate of incorporation, be, and the same are hereby forever forfeited, annulled and set aside and said Waters-Pierce Oil Company, is hereby ousted of its corporate rights and powers and franchises heretofore granted to and enjoyed by it under the laws of this State, subject, however, to the further provisions of this judgment, and for the violation of its said franchises, by forming, entering into and maintaining the said pool, combination, and conspiracy, to regulate, control, and fix the prices of the products of petroleum, as hereinbefore specifically found and set forth and to prevent competition in the business of buying and selling said products in this State, it is considered, ordered, and adjudged by the court that in addition to said ouster, said Waters-Pierce Oil Company be fined fifty thousand dollars, and that it pay said fine of fifty thousand dollars, to the clerk of this court, on or before the first day of March, 1909, to be by said clerk paid into the treasury of this State, and upon default and failure to pay said fine on or before said date, the State of Missouri have execution therefor, to be levied by the marshal of this court and enforced according to the laws of this State in such cases made and provided.

"But it is further considered, ordered, and adjudged by this court, that if the said Waters-Pierce Oil Company, shall pay said fine to the clerk of this court on or before the first day of March, 1909, and shall immediately cease all connection with the said

other respondents herein in continuing or maintaining said pool, trust, and conspiracy to fix, control, and regulate the prices of naphtha, benzine, gasolene, kerosene, lubricating oil, and all other products of petroleum, and shall refrain from all pools, trusts, and combinations to control the prices of said products of petroleum, and all combines and conspiracies to prevent competition in the trade of buying and selling said products and shall furnish this court with satisfactory evidence of its compliance with this judgment, and of its intention in good faith to cease all connection with its said co-respondents herein and all other parties or companies whatsoever, and in the future maintain and carry on its business as an independent corporation in obedience to the laws of this State and its charter then the judgment of ouster herein shall be and is hereby suspended and the writ of ouster herein will not issue until expressly directed by order of this court, and the said Waters-Pierce Oil Company is hereby given until the fifteenth day of January, 1909, to file the proofs of its willingness to comply with the judgment of this court, and until that date in no event, will the writ of ouster be awarded. And it is further considered, ordered, and adjudged by the court, that if it shall be shown to the satisfaction of this court hereafter, that notwithstanding the promises and assurances of the said Waters-Pierce Oil Company to abide by this judge, it has violated the conditions of this judgment and has violated the said statute against 'Pools, Trusts, and Conspiracies,' then and in such case the sus-

pension of the writ of ouster shall be removed by this court and absolute ouster be enforced as directed and adjudged herein.

"It is further ordered and adjudged that the State of Missouri at the relation of the Attorney-General have and recover its costs herein paid and expended, including the allowance of the special commissioner and the stenographer in taking and certifying the testimony herein and the fees of the witnesses and have execution therefor, against all of said respondents."

We next print that part of the record showing payment of the $50,000.00, etc., by the Waters-Pierce Oil Company (pp. 453, 4 & 5, Record).

Payment, Waters-Pierce Oil Co.

"IN THE SUPREME COURT OF MISSOURI.

"STATE, upon the Information of the Attorney-General, *Plaintiff*,

vs.

"THE STANDARD OIL COMPANY OF INDIANA, THE REPUBLIC OIL COMPANY, and THE WATERS-PIERCE OIL COMPANY, *Defendants.*

"Comes now the Waters-Pierce Oil Company in the above-entitled cause, pursuant to the order and judgment rendered therein, and files herewith a duly certified copy of a resolution of its board of directors, passed February 13th, 1909, wherein and whereby it agrees to accept, and does accept, the con-

ditions of the aforesaid decree, and agrees to abide by the same, and does hereby respectfully submit itself to the further orders, judgments and decrees of this honorable court in and concerning the premises.

"And the said The Waters-Pierce Oil Company deposits herewith a certified check in the sum of fifty thousand dollars ($50,000.00) to the order of the clerk of this court in payment of the fine imposed upon this defendant by virtue of said judgment and decree.

"WATERS-PIERCE OIL COMPANY.
By BOYLE & PRIEST,
J. D. JOHNSON, *Its Attorneys.*

"STATE OF MISSOURI,
City of St. Louis, ss:

"The undersigned, C. A. Pierce, president of the Waters-Pierce Oil Company, a corporation organized under the State of Missouri, hereby certifies that the following is a true and correct copy of the minutes of the adjourned regular monthly meeting of the board of directors of said company, held at the company's office in the city of St. Louis on the 13th day of February, 1909, as the same appears of record in the regular minute book in which is entered the minutes of the meetings of the board of directors of said company, to wit:

"OFFICE OF WATERS-PIERCE OIL COMPANY,
"420 OLIVE STREET, ST. LOUIS, MO.,
"*February 13th*, 1909.

"At the adjourned regular meeting of the board of directors of the Waters-Pierce Oil

Company, held at the company's office in the city of St. Louis, Missouri, this the 13th day of February, 1909, there were present and participated in the meeting H. C. Pierce, chairman of the board; C. A. Pierce, president; C. M. Adams, secretary and treasurer, and Walter F. Taylor, directors.

"The meeting was called to order by H. C. Pierce, chairman of the board, and Mr. Adams acted as secretary. The minutes of the special meeting of the board, held on the 14th day of January, 1909, and of the regular monthly meeting of the board, held on the 1st day of February, 1909, were read and approved.

"The following resolution was then offered, and, on motion duly seconded, was unanimously adopted, to wit:

" 'Resolved, That this company, protesting that it has never consciously or knowingly violated any of the provisions of the laws of this State, nevertheless does hereby accept the terms and conditions of the order or decree of the Supreme Court of Missouri, entered in the cause of the State upon the information of Herbert S. Hadley, Attorney-General, against the Standard Oil Company of Indiana, the Republic Oil Company and the Waters-Pierce Oil Company, and does hereby express its willingness to abide by the same.'

"There being no further business to transact the meeting adjourned.

"H. C. PIERCE,
"Chairman of the Board.

"Attest:
"C. M. ADAMS, *Secretary.*

"In witness whereof the said C. A. Pierce, president of said company, has hereunto set his hand, and C. M. Adams, secretary of said company, has attested these presents and affixed the corporate seal of said corporation thereto. All done at the city of St. Louis, State of Missouri, this the 13th day of February, 1909.

"CLAY ARTHUR PIERCE, *President.*

"Attest:
[SEAL.] C. M. ADAMS, *Secretary.*"

We now print the order of court *sustaining* the judgment of ouster of the Waters-Pierce Oil Company, but which judgment of ouster may be made absolute at any time (p. 478, Record).

Order Suspending Ouster.

"STATE *ex Inf.* ATTORNEY-GENERAL
vs.
STANDARD OIL COMPANY ET AL.

"The Waters-Pierce Oil Company having tendered into court the amount of the fine imposed on it by the judgment of this court, having given satisfactory evidence of its purpose to henceforth so conduct its business as not to violate the law of this State in regard to pools, trust, and conspiracies, it is ordered by the court that the clerk of this court receive the money so tendered and pay the same into the State treasury, and it is further ordered that the judgment of this court of date December 23d, 1908, ousting the Waters-Pierce Oil

> Company of its charter, and adjudging all its rights and privileges thereunder forfeited and annulled, be and the same is hereby suspended until otherwise ordered by the court, but the court will retain jurisdiction of the cause for the purpose of setting aside and annulling this order or modifying the same if the court should hereafter on motion of the Attorney-General or its own motion become satisfied that the Waters-Pierce Oil Company is at that time or has been conducting its business in a manner forbidden by the law of this State in relation to pools, trust, and conspiracies."

By reason of these facts and by reason of the failure to secure a severance or the refusal of the Waters-Pierce Oil Company to join in the writs upon written notices, etc., all of which must be a matter of record, this court cannot take jurisdiction and consider the cases and the writs must be dismissed.

Points and Authorities.

I.

All parties against whom a judgment or decree is entered must join in suing out a writ of error, unless summons has been issued and the court has ordered a severance, or unless the parties upon due and proper written notice file their refusal to join.

This must be done even where a party *defaulted* below.

Masterson *vs.* Herndon, 10 Wall., 416.
Beardsly *vs.* R. R. Co., 158 U. S., 123.
Todd *vs.* Daniel, 16 Pet., 521.
Simpson *vs.* Breeley, 20 Wall., 152.
Inglehart *vs.* Stansbury, 151 U. S., 568.
Hardee *vs.* Wilson, 146 U. S., 179.
Feibelman *vs.* Packard, 108 U. S., 14.
Wilson *vs.* Keisel, 164 U. S., 248.
Foster's Federal Practice, Vol. 3, p. 2052.

II.

Written notice to a defendant and his refusal to join in the writ of error is equivalent to a summons and a severance.

O'Dowd *vs.* Russell, 14 Wall., 402.

III.

Unless there has been a severance or notice to and a refusal to join, the Supreme Court of the United States does not take jurisdiction of the writ of error. The same rule applies to both an appeal and a writ of error.

Estes *vs.* Trabue, 128 U. S., 225.
Mason *vs.* United States, 136 U. S., 581.
Feibelman *vs.* Packard, 108 U. S., 14.

IV.

Where an appeal or writ of error is brought by one of several joint defendants, without a summons and severance or proceedings equivalent thereto, such as notice and refusal to join, the appeal will be dismissed.

Hardee *vs.* Wilson, 146 U. S., 179.
Simpson *vs.* Greeley, 20 Wall., 152.
Shannon *vs.* Cavazos, 131 U. S., —.
Inglehart *vs.* Stansburg, 151 U. S., 68.

V.

That the judgment or decree may make different provisions with respect to the defendants is immaterial; the writ cannot be prosecuted without the severance or notice and refusal.

Beardsley *vs.* Arkansas R. R., 158 U. S., 123.

VI.

The reason for the rule is that the plaintiff may know the condition of his judgment and that the courts may not be called upon two or more times to pass upon the same questions and in the same case.

VII.

After plaintiffs in error sued out their writs the Waters-Pierce Oil Company could also sue out a writ, and thus the court would be called upon to pass upon all the questions over again.

Again, the State was entitled to know *at the time* the plaintiffs in error sued out their writs what the Waters-Pierce Oil Company would do, so the State might know the condition and character of its judgment.

VIII.

The Waters-Pierce Oil Company could be in no better position than a defendant which had defaulted. If a severance must be had for a defendant who has defaulted certainly a severance must be had as to the Waters-Pierce Oil Company, before the Standard Oil Company of Indiana and the Republic Oil Company could prosecute their writs in this honorable court.

Foster's Federal Practice, vol. 3, p. 2052.
Masterson *vs.* Herndon, 10 Wall., 416.
Beardsly *vs.* Railroad Co., 158 U. S., 123.

ARGUMENT.

The Standard Oil Company of Indiana, the Republic Oil Company, and the Waters-Pierce Oil Company, having been proceeded against jointly by the State of Missouri for having entered into an agreement, arrangement, and conspiracy among themselves to fix, regulate, and control the prices of oils in Missouri, and to control and limit trade, and to prevent competition, all in violation of the laws of that State, and the court having found and adjudged them guilty as charged, and the court having entered one judgment against the three said corporations, no one of the defendants could sue out a writ of error without having the court order a severance or without having given written notice and without having filed the refusal of the others to join in the writ.

Had one of the defendant companies defaulted, this court could not have taken jurisdiction of the writ of error without a severance or notice and refusal of the others to join in the writ appearing of record. Had the Waters-Pierce Oil Company defaulted, these writs could not be heard. One who defaults is willing to take and accept the judgment of the court. The Waters-Pierce Oil Company could occupy no better position than if it had defaulted.

The Waters-Pierce Oil Company was not precluded at any time within the statutory period

from suing out a writ. The court might at any time after entering an order suspending the judgment of ouster as to it, and after having received the payment of $50,000, make the ouster absolute, and the company could still prosecute a writ of error.

When the plaintiffs in error in these cases sued out their writs the State of Missouri was entitled to know at that time what would be done by the Waters-Pierce Oil Company, so as to know what character of judgment it had against the defendants. Before the plaintiffs in error could be heard upon writ of error in this court it became their duty to compel the Waters-Pierce Oil Company to determine by its statements in the case what its attitude would be. It became necessary to close the forum as to all three defendants. In other words, each of the three defendants had to determine at that time what the attitude of each would be toward joining or not joining in the writ and the whole matter entered of record, otherwise the Supreme Court of the United States would not take jurisdiction and the action of the Supreme Court of Missouri could not be reviewed.

That the court ordered the suspension of the judgment of ouster as to the Waters-Pierce Oil Company is immaterial, and, besides this, it could be made absolute at any day by the court. Upon motion to make the judgment absolute, should the same have been sustained, there not having been a severance and the company not having been com-

pelled to join in the writs or file its refusal, the Waters-Pierce Company could sue out its writ of error and thus defeat what should have been a final judgment from which no writ of error could have been sued out, had the Standard Oil Company of Indiana and the Republic Oil Company proceeded in the matter of suing out their writs as the law and rule required them to do.

The plaintiffs in error not having had the court order a severance and not having given notice and not having secured the refusal of the Waters-Pierce Oil Company to join in the writs, this court will not take jurisdiction. For these reasons we ask that the writs be dismissed, and for all other proper relief, entries, and decrees.

Respectfully submitted,

ELLIOTT W. MAJOR,
Attorney-General of Missouri;
CHARLES G. REVELLE,
Assistant Attorney-General,
Attorneys and Counselors for
Defendant in Error.

Supreme Court of the United States.

Nos. 47 and 48.—October Term, 1911.

Standard Oil Company of Indiana, Plaintiff in Error, 47 *vs.* The State of Missouri on the Information of Herbert S. Hadley, Attorney General, succeeded by Elliot W. Major, et al.	In error to the Supreme Court of the State of Missouri.
Republic Oil Company, Plaintiff in Error, 48 *vs.* The State of Missouri on the Information of Herbert S. Hadley, Attorney General, succeeded by Elliott W. Major, et al.	

[April 1, 1912.]

Writ of error to a judgment of ouster and fine against plaintiffs in error in original *quo warranto* preceedings in the Supreme Court of Missouri.

The Missouri Anti-trust Act (Rev. Stat. of 1899, secs. 8968, 8971) provides that any person or corporation which shall form a combination in restraint of trade shall be deemed guilty of a conspiracy to defraud, and on conviction shall be subject to a penalty of not less than $5 nor more than $100 per day for each day the combination continues, and in addition the guilty corporation shall have its franchises forfeited.

In April, 1905, while this act was in force, the Attorney General filed an information in the nature of a writ of *quo warranto* against the Standard Oil Company and the Republic Oil Company, foreign corporations, holding licenses to do business in Missouri, and the Waters-Pierce Oil Company, a domestic company, alleging that between the day of 1901, and March 29, 1905, they had formed and maintained a combination to prevent competition in the buying, selling and refining oil to the great damage of the people of Missouri.

The information contained no reference to the Anti-trust Act further than was involved in the allegation that "by reason of the premises, said respondents, . . . grossly offended against the laws of the State, and wilfully and flagrantly abused and misused their . . . franchises . . . and their acts . . . constitute a wilful and malicious perversion of the franchise granted the said corporations . . . " Wherefore, your informant, prosecuting in this behalf for the State of Missouri, prays "that

each of the defendants be ousted of their said corporate franchises and license to do business under the laws of the State.

The defendants answered, denying all the allegations of the petition and moving to dismiss on many grounds not material to be considered here. The case was referred to a commissioner to take testimony and report findings of fact and conclusions of law.

While the case was under consideration the anti-trust statute was amended in March, 1907, so as to provide that if any corporation should be found guilty of a violation of the provisions of the act its charter or license should be forfeited, and the court might also forfeit any or all of its property to the State, or cancel its right to do business, or the court might assess a fine. It was provided that the act should not operate to release any penalty, forfeiture or liability already incurred.

After the passage of this amendment, making new and increased penalties for a violation of the Anti-trust Statute, the commissioner made his report, finding (May 24, 1907,) against the defendants on the law and the fact. On June 22, 1907, the Republic Oil Company filed with the Secretary of State, in statutory form, a notice of its withdrawal from the State. On October 23, 1907, the fact of this withdrawal was brought to the attention of the court, and a motion was made that the case be abated so far as the Republic Oil Company was concerned. The motion was overruled, and later the court found that each of the defendants had entered into a combination in restraint of trade and prevented and destroyed competition. And it was adjudged that the defendants had each forfeited their right to do business, and they were each ousted of any and all right and franchise and fined $50,000. In view of the capital of the company and the amount of profits that had been made during the period of the combination, some members of the court expressed the opinion that the fine should be $1,000,000.

A motion for rehearing was denied. The Waters-Pierce Oil Company paid the fine and complied with conditions, by virtue of which it was permitted to continue to do business in the State. The other two defendants brought the case here.

It is alleged that—

(*b*) "The court held that this was a civil proceeding, and that it had no criminal jurisdiction. It then, in addition to an ouster, adjudged that this respondent should pay a fine of $50,000. This fine was at least the exercise of criminal jurisdiction in an original proceeding, which was beyond the court's power and jurisdiction. The court thereby takes from the respondent its property without due process of law, discriminates against respondent, and refuses to accord to it the equal protection of the law, all of which is contrary to the Fourteenth Amendment to the Constitution of the United States.

There are various assignments of error challenging the constitutionality of the anti-trust statute, on the ground that it deprived defendants of their property without due process of law and interfered with interstate commerce. It was also claimed that the defendants were denied the equal protection of the law, in that in forfeiting their franchise and imposing a fine of $50,000, without a jury trial, a different procedure had been adopted and a different judgment entered from that which could have been rendered on conviction by a jury for violation of the anti-trust statute.

The defendants (now plaintiffs in error) sought first a reversal of the judgment of the Supreme Court of Missouri, and, in the alternative, a modification of the judgment.

To this end attention was called to the fact that the plaintiffs in error were parties in the case of *United States* v. *Standard Oil Company et al.* They pray that the judgment herein be modified so as to provide that it should not be held to conflict with any decree entered in that equity cause so far as concerned property in Missouri belonging to plaintiffs in error.

It was also urged that the statute making it a felony for any person to sell or deal in articles manufactured by a corporation whose license had been forfeited, would operate to destroy the value of the plaintiff's property in Missouri, and would in effect prevent them from engaging in interstate commerce. They moved that the judgment be modified here so as to provide against any such result.

Mr. Justice LAMAR, after making the foregoing statement, delivered the opinion of the Court.

The Standard Oil Company and the Republic Oil Company by this writ of error seek to reverse a judgment of ouster and fine of $50,000, entered against each of them in original *quo warranto* proceedings by the Supreme Court of Missouri, contending that they are thereby deprived of property without due process of law and denied the equal protection of the law.

The briefs and arguments for the defendants were addressed mainly to the proposition that the fine of $50,000 was a criminal sentence in a civil suit and void because beyond the jurisdiction of the court, and, for the further reason, that the pleadings and prayer gave no notice which would support such a sentence.

1. It is, of course, essential to the validity of any judgment that the court rendering it should have had jurisdiction, not only of the parties, but of the subject-matter. *Chicago etc. Co.* v. *Chicago*, 166 U. S. 234, 247. But it is equally well settled that it is for the Supreme Court of a State finally to determine its own jurisdiction and that of other local tribunals, since the

decision involves a construction of the laws of the State by which the court was organized. In this case the constitution of Missouri declared that "the Supreme Court shall have power to issue writs of *habeas corpus, quo warranto,* certiorari and other remedial writs, and to hear and determine the same." Its decision and judgment necessarily imply that under that clause of the constitution it had jurisdiction of the subject-matter and authority to enter judgment of ouster and fine in civil *quo warranto* proceedings. That ruling is conclusive upon us regardless whether the judgment is civil or criminal or both combined. *Standard Co.* v. *Tenn.*, 217 U. S. 420.

2. The Federal question is whether, in that court, with such jurisdiction, the defendants were denied due process of law. Under the Fourteenth Amendment they were entitled to notice and an opportunity to be heard. That necessarily required that the notice and the hearing should correspond, and that the relief granted should be appropriate to that which had been heard and determined on such notice. For even if a court has original general jurisdiction, criminal and civil, at law and in equity, it cannot enter a judgment which is beyond the claim asserted, or which, in its essential character, is not responsive to the cause of action on which the proceeding was based.

"Though the court may possess jurisdiction of a cause, of the subject-matter, and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by the law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for a libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will. . . . The judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely void, because the court in rendering them would transcend the limits of its authority in those cases." *Windsor* v. *McVeigh*, 93 U. S. 274, 282. See also *Reynolds* v. *Stockton*, 140 U. S. 265–268. *Barnes* v. *Railway*, 122 U. S. 1, 14.

The defendants claim that the present case is within this principle—that the judgment for a fine of $50,000—which some of the Missouri court thought should have been a million dollars—was not only a criminal sentence in a civil suit, but beyond the issues and the prayer for relief in the Information—and therefore void as having been in substance entered without notice and opportunity to be heard. This raises the old question whether Information in the nature of *quo warranto* is a civil or a criminal proceeding, and the further question whether, under general allegations of misuser in an Information with only a prayer for ouster, a fine may be imposed in those jurisdictions where *quo warranto* has ceased to be a criminal proceeding

The uncertainty as to the relief that may be granted in such case arises from the fact that at one time the proceeding was wholly criminal and those guilty of usurping a franchise were prosecuted by Information instead of by Indictment, and punished both by judgment of ouster and by fine. But in England before the Revolution, and since that date in most of American States, including Missouri, *quo warranto* has been resorted to for the purpose of trying the civil right, and determining whether the defendant had usurped or forfeited the franchise in question. After this method of procedure began to be used as a form of action to try title, it was inevitable that the civil feature would tend to dominate in fixing its character for all purposes. But the discussion as to the nature of such writs and the character of the judgment that could be entered, though not controlled by their use, (*Coffee* v. *Hoban Co.*, 204 U. S. 659, 664; *Huntington* v. *Attrill*, 146 U. S. 667; *Boyd* v. U. S., 116 U. S. 634,) has been prolonged by the retention of the words Information, Prosecute, Guilty, Punish, Fine—survivals of the period when the writ was a criminal proceeding in every espect.

In some jurisdictions the writ is still treated as criminal both in the procedure adopted and in the relief afforded. *State* v. *Kearn*, 17 R. I. 401. But there are practically no decisions which deal with the nature and amount of the fine which can be entered, in States where, as in Missouri, *quo warranto* is treated as a purely civil proceeding. The references to the subject both in text-books and opinions are few and casual. They usually repeat Blackstone's statement (3 Comm. 262) that the writ is now used for trying the civil right, "the fine being nominal only." *Ames* v. *Kansas*, 111 U. S. 470; *Comm.* v. *Woelper*, 3 Serg. & R. 53; High on Extraordinary Legal Remedies, 702, 697, 593. These authorities and the general practice indicate that in most of the American States only a nominal fine can be imposed in *civil quo warranto* proceedings. We shall not enter upon any discussion of the question as to the character of the proceeding nor the amount and nature of the money judgment. For, in Missouri, and prior to the decision in this case, the rulings were to the effect that the Supreme Court of Missouri had jurisdiction not only to oust but to impose a substantial fine in *quo warranto*.

In 1865, under a constitution which, like the present, conferred power "to issue writs of *quo warranto* and hear and determine the same," the court tried the case of *State ex Inf.* v. *Bermoudy*, 36 Mo. 279, brought against the clerk of a Circuit Court for usurpation of the office. There was a prayer for judgment of ouster and costs. The court said:

"No evidence is offered to charge the defendant with any evil intent, and it being probable that he acted from mistaken views only, the court will not avail itself of the power given by law, to impose a fine on him, and will compel him to pay the costs only of this proceeding."

In 1902, in *State* v. *Armour Packing Co. et al.*, 173 Mo. 393, information in the nature of *quo warranto* was filed in the Supreme Court against three corporations, praying that their franchises be forfeited because they had formed and maintained a conspiracy in restraint of trade. The court held that, "under the circumstances, the judgment of absolute ouster is not necessary, but the needs of justice will be satisfied by the imposition of a fine." It thereupon adjudged that each of the defendants should pay the sum of $5,000 as a fine, together with the costs of court.

In *State ex Inf.* v. *Delmar Jockey Club*, 200 Mo. 7, *quo warranto* was brought to forfeit the charter of the company, because it had violated a criminal statute prohibiting the sale of pools on horse races. A judgment of ouster was entered and a fine of $5,000 was imposed. On rehearing the judgment was amended and the provision for a fine omitted. Evidently this was not for want of jurisdiction to impose such sentence, but because it was considered that ouster was all that was demanded by the facts. This appears from the fact that in the present case the court adopted the language of the original Delmar decision, in which it was said that the fine is imposed for a violation of the corporation's implied contract not to violate the franchise granted by the State (218 Mo. 360). So that, whatever may be the rule elsewhere, in Missouri a corporation may in *quo warranto* be subjected to a money judgment—whether called a fine as punishment,—or damages for its implied contract not to violate its franchise.

3. But the defendants insist that even if the court had jurisdiction of the subject-matter and was authorized to impose a fine, there was nothing in the pleading to indicate that such an issue was to be tried, nor any prayer warranting such relief, and hence that the judgment is wanting in due process of law and void for want of notice of what was to be heard and determined. It is true that the Information did not ask for damages or that a fine should be imposed. But if this be treated as a criminal case a prayer was no more necessary than in an Indictment or ordinary Information, since such proceedings never contain any reference whatever to the judgment or sentence to be rendered on conviction. In civil suits the pleadings should no doubt contain a prayer for judgment so as to show that the judicial power of the court is invoked. The rules of practice also may well require that the plaintiff should indicate what remedy he seeks. But the Prayer does not constitute a part of the notice guaranteed by the Constitution. The facts stated fix the limit of the relief that can be granted. While the judgment must not go beyond that to which the plaintiff was entitled on proof of the allegations made, yet the court may grant other and different relief than that for which he prayed.

4. Nor, from a Federal standpoint, is there any invalidity in the judgment because there was no statute fixing a maximum penalty, no rule for

measuring damages, and no hearing on a subject which it is claimed was not referred to in the Information. At common law, and under many English statutes, the amount of the fine to be imposed in criminal cases was not fixed. This was true of the statute of 9 Ann, chapter 20, which, in *quo warranto* cases, made it "lawful as well to give judgment of ouster as to fine for usurping or unlawfully exercising any office or franchise." The amount to be paid in all such cases was left to the discretion of the court, "regulated by the provisions of Magna Charta and the Bill of Rights that excessive fines ought not to be demanded." 4 Black. Comm. 378. Or, considering the fine as in the nature of a civil penalty, the case is within the principle which permits the recovery of punitive damages. They are not compensatory, nor is the amount measured by rule. But "where the defendant has acted wantonly or perversely, or with such malice as implies a spirit of mischief or criminal indifference to civil obligations" (*Lake Shore* v. *Prentice*, 147 U. S. 407), damages may in some jurisdictions be assessed, even in civil cases, by way of punishment. It is true that, except in cases for the breach of a contract of marriage, punitive damages have been allowed only in actions for torts. But no Federal question arises on a ruling that, in Missouri, punitive damages may be recovered from a corporation for the violation of its implied contract when, as alleged in the Information, the defendants "wilfully and wantonly misused their licenses." *Iowa Ry.* v. *Iowa*, 160 U. S. 369.

The real objection is not so much to the existence of the power to fix the amount of the fine as the fact that, when exercised by the Supreme Court of the State, it is not subject to review, and is said to be unlimited. But it is limited. *Waters Pierce* v. *Texas*, 212 U. S. 111. It is limited by the obligation to administer justice, and to no more assess excessive damages than to impose excessive fines. But the power to render a final judgment must be lodged somewhere, and in every case a point is reached where litigation must cease. What that point is can be determined by the legislative power of the State, for right of appeal is not essential to due process of law. *Twining* v. *New Jersey*, 211 U. S. 111.

The Fourteenth Amendment guarantees that the defendant shall be given that character of notice and opportunity to be heard which is essential to due process of law. When that has been done the requirements of the Constitution are met, and it is not for this court to determine whether there has been an erroneous construction of statute or common law. *Iowa Railway* v. *Iowa*, 160 U. S. 369; *West* v. *Louisiana*, 194 U. S. 261. The matter was summed up by Justice Moody in *Twining* v. *New Jersey*, 211 U. S. 110, where, citing many authorities, he said:

"Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction, . . . and that there shall be notice and opportunity for hearing given the parties. . . . Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law established by civilized countries, this court has up to this time sustained all State laws, statutory or judicially declared, regulating procedure, evidence and methods of trial, and held them to be consistent with due process of law. . . ."

There is nothing in the present record which takes the case out of that principle. This was not like a suit on a note resulting in a sentence to the penitentiary; nor does it resemble any of the extreme illustrations given in *Windsor* v. *McVeigh*, 93 U. S. 282, in which, after a trial, the judgment of a court having jurisdiction might be invalidated because the relief so far exceeded the issue heard as, in effect, to deprive the defendant of the benefit of his constitutional right to notice. No such question is presented in the present case, for the plaintiffs in error were bound to know that, under the laws of Missouri, the court, on proof of the charge contained in the Information, might impose a fine, and were afforded an opportunity to offer evidence in mitigation or reduction. On the application for a rehearing there was no claim that the fine was excessive, but the judgment was attacked on the ground that, for want both of jurisdiction and of notice, no such penalty could be imposed. We are concluded by the decision of the Supreme Court of the State as to its power; the judgment was within the issues submitted and is not void as having been entered without due process of law.

If the judgment was not void we cannot consider the collateral questions as to whether the suit abated against the Republic Oil Company when it gave notice of its withdrawal from the State; nor whether the act of 1905, amending the Anti-trust Act, operated to relieve the defendant from the penalties for all combinations in restraint of trade entered into prior to the adoption of the amending statute. These are non-federal questions.

5. It is further contended that the defendants were denied the equal protection of the law. This claim is based upon the fact that without indictment or trial by jury they were ousted of their franchise and subjected to a fine of $50,000 at the discretion of the Supreme Court, while corporations prosecuted in the Circuit Court for the identically same acts in violation of the anti-trust statute were entitled to a trial by jury and, if convicted, could be ousted of their franchises and subjected to a fine not to exceed $100 per day, during the time the combination continued in effect.

But proceedings by Information in the nature of *quo warranto* differ in form and consequence from a prosecution by indictment for violation of a criminal statute. In the one the State proceeds for a violation of the com-

pany's private contract—in the other it prosecutes for a violation of public law. The corporation may be deprived of its franchise for nonuser—a mere failure to act. It may also be deprived of its charter for that which, though innocent in itself, is beyond the power conferred upon it as an artificial person. If, however, the act of misuser is not only *ultra vires* but criminal, there is no merger of the civil liability in the criminal offence. Separate proceedings may be instituted—one to secure the civil judgment, and the other to enforce the criminal law. Both cases may involve a consideration of the same facts; and evidence warranting a judgment of ouster may be sufficient to sustain a conviction for crime. A judgment may in one case sometimes be a bar to the other; but neither remedy is exclusive. The double liability, in civil and criminal proceedings, finds its counterpart in many instances, as, for example, where an attorney is disbarred or ousted of his right to practice in the court because of conduct for which he may likewise be prosecuted and fined.

In addition to these considerations it is to be noted that though the Anti-Trust Act provides for penalties somewhat similar to those which may be entered in *quo warranto* proceedings, the statute did not, and, as held by the Supreme Court, could not lessen the power conferred upon it to hear and determine *quo warranto* proceedings and to enter judgments which on general principles appertained to the exercise of such constitutional jurisdiction. *Standard Oil Co.* v. *Tenn.*, 217 U. S. 421; *Delmar Jockey Club* v. *State*, 210 U. S. 324.

It was pointed out in the opinion (218 Mo. 349), that where a corporation had entered into a combination in restraint of trade, it thereby offended against the law of its creation, and consequently forfeited its right longer to exercise its franchise. It was thereupon held, that in Missouri *quo warranto* might have been instituted for such acts of misuser, even though there had been no criminal statute on the subject. For this reason neither the validity nor invalidity of the anti-trust statute have any bearing on the case. The plaintiffs in error cannot complain that they were deprived of the equal protection of the law, because in the civil proceeding they were not tried in the manner, and subjected to the judgment, appropriate in criminal cases.

If the plaintiffs in error were afforded due process of law, and were not deprived of the equal protection of the law, the judgment cannot be reversed. And, if it cannot be reversed, it cannot be modified to provide that it shall not be construed to conflict with a decree entered in an equity cause in another court to which plaintiffs are parties. Neither can it be amended by adding a provision that the judgment of ouster shall not operate to make those who buy plaintiff's products subject to prosecution, under the

Act of 1907, making it a felony for any person to deal in articles manufactured by a corporation whose license had been forfeited. This statute which, it is said, will deprive plaintiffs of the right to do interstate business, is not before us. We have no right to assume that it will be applied so as to interfere with any right, which plaintiffs have, under the constitution, to do interstate business.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.